Supreme Court, U.S
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No. _____

In The

Supreme Court of the United States

VICTOR BRANCACCIO,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

On Petition For A Writ Of Certiorari To The District Court Of Appeal Of The State Of Florida, Fourth District

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER A SEVERELY MENTALLY AND EMOTIONALLY COMPROMISED MINOR CAN KNOWINGLY AND VOLUNTARILY WAIVE HIS *MIRANDA* RIGHTS WHERE THE POLICE ISOLATE HIM FROM HIS PARENTS, LEAVE HIM HANDCUFFED TO A CHAIR IN A SMALL INTERROGATION ROOM, REFUSE TO TELL HIM WHY HE IS IN CUSTODY BEFORE HE SIGNS THE WAIVER FORM, AND USE TRICKERY AND DECEIT TO OBTAIN A CONFESSION.

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner, VICTOR BRANCACCIO, by his undersigned counsel, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the District Court of Appeal of the State of Florida, Fourth District, affirming his conviction and sentence.

OPINION OF THE COURT BELOW

The written opinion of the District Court of Appeal of the State of Florida, Fourth District is included in the appendix. *Brancaccio v. State of Florida*, 773 So.2d 582 (Fla. 4th DCA 2000).

JURISDICTION

The opinion of the District Court of Appeal was entered on November 22, 2000. Petitioner's timely motion for rehearing was denied on January 4, 2001. Petitioner then filed a timely notice invoking the discretionary jurisdiction of the Supreme Court of Florida. The Supreme Court of Florida issued an order denying review on June 20, 2001. That action completed state court review of this case for purposes of invoking the jurisdiction of this Court. *See Florida Star v. B.J.F.*, 530 So.2d 286 (Fla. 1988).

This petition is filed pursuant to Rules 10(c) and 13, Rules of the Supreme Court. The jurisdiction of this Court is invoked pursuant to the provisions of Title 28, United States Code, Section 1257. This case involves a question of

federal constitutional law decided by a state court in conflict with decisions of this Court.

APPLICABLE PROVISIONS

United States Constitution, Amendment V provides in pertinent part:

> No person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law. . . .

United States Constitution, Amendment VI provides in pertinent part:

> In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation; . . . and to have the Assistance of Counsel for his defense.

United States Constitution, Amendment XIV provides in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law. . . .

STATEMENT OF THE CASE

This is a petition for a writ of certiorari to the District Court of Appeal of the State of Florida, Fourth District. The Florida court ruled that deliberate dishonesty by the

police to a mentally and emotionally compromised 16-year-old boy with little experience of the criminal justice system and isolating him by leaving him handcuffed to a chair in a small interrogation room then deliberately waiting to notify his parents until after the boy had confessed did not affect the voluntariness of the boy's waiver of his *Miranda* rights. [App. 1]. Admission of Victor Brancaccio's subsequent confession violated his rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

Victor Brancaccio was convicted of first-degree felony murder and kidnapping in the death of Mollie Frazier. [App. 14]. At the time, Victor Brancaccio was not even a normal 16-year-old boy. [App. 118]. Victor has borderline intelligence, just above the level of mental retardation. [App. 159-61]. He has learning disabilities and functions as if he is mentally retarded. [App. 159-61]. In the weeks before this incident, Victor was involuntarily placed in mental hospitals twice. [App. 63, 132]. He had little experience with the criminal justice system, having only one prior arrest – for stealing beer. [App. 23].

The State's case was built primarily on Victor's statement to the police. The State used this statement not only to prove the facts relating to the crimes of murder and kidnapping, but also as the basis for expert testimony about Victor's mental state at the time of the incident. There was never any question that Victor had killed Mrs. Frazier, although whether a kidnapping had occurred was vigorously contested at trial. Victor's primary defense was that he was suffering from involuntary intoxication from prescription antidepressant medication.

On the morning of June 14, 1993, the police arrested Victor Brancaccio while he was with his employer. *See* App. 16. Victor was handcuffed and transported to the police station by Officer Theede. *See* App. 18, 83. At the police station, officers took Victor to a small interrogation room and handcuffed him to a chair.[1] [App. 120]. He waited there for about half an hour with Officer Theede and Detective Ruether. [App. 84].

Victor repeatedly asked why he was in custody. [App. 83-85]. Officer Theede told Victor he did not know. [App. 83]. This was the first of several lies police would tell Victor. In fact, Officer Theede did know that Victor was suspected of first-degree murder. [App. 83-84]. The police never told Victor why he was in custody until after he had signed a form waiving his *Miranda* rights. [App. 20-22, 85].

Prior to questioning, Victor also asked the police if his parents had been called. [App. 85, 108]. Detective Ruether replied "that it was being taken care of." [App. 85, 108]. Officer Theede understood Detective Ruether's response to mean that someone was informing Victor's parents. [App. 85-86]. In fact, neither Officer Theede nor Detective Ruether contacted Victor's parents. [App. 86, 92].[2]

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[1] The handcuffs were removed right before questioning began. [App. 18].

[2] Detective Ruether did not remember the specifics of his conversation with Victor, including whether Victor ever asked if his parents had been called. [App. 92]. However, Officer Theede included these specifics in his police report and testified to them both at the suppression hearing and at trial. [App. 106-08].

The actual interrogation of Victor Brancaccio was conducted by Detective Scott Beck. [App. 16]. Beck does not remember if anyone told him that Victor had asked that his parents be notified. [App. 98]. However, Detective Beck testified that even if he had known that Victor had asked that his parents be called, he would not have done it. [App. 101-02]. Detective Beck deliberately chose to delay notifying Victor's parents until after he had a chance to obtain a confession from Victor.

Beck testified that the main reason he delayed notifying Victor's parents was that other officers were serving a search warrant at Victor's house and Beck was concerned about officer safety and the destruction of evidence. [App. 101-04]. Yet, Beck began questioning Victor even before the warrant was served. [App. 97-98]. Detective Beck deliberately chose not to wait until Victor's parents could safely be notified. It was only after Victor confessed to murder that Detective Beck called the officers who were still searching the Brancaccio home, and they finally notified Victor's parents. [App. 105].

Beck interrogated Victor with Detective Ruether and an assistant state attorney present. [App. 16]. Victor had no one. Beck read Victor his *Miranda* rights and after each one asked Victor if he understood. Victor simply said "yes" – and signed the waiver form. [App. 16-21].

During the interrogation, Beck used various tactics to coax a confession from Victor. First, Beck told Victor, "it's gonna be a lot better for everybody involved in this including yourself, so let's just get this out, alright." [App. 21-22]. Beck was the first to set out a chronology of the incident – before Victor had even confessed. [App.

34]. Then Beck lied to Victor about the evidence against him, telling Victor they had witnesses they did not really have and that his fingerprints had been found on Mollie Frazier's body. *See* App. 22, 34. Immediately after that last lie Victor confessed. [App. 34]. Even then, Beck led Victor every step through his confession with suggestive and leading questions.

Victor's original trial counsel filed a motion to suppress Victor's statement to the police on the grounds that given Victor's mental condition he could not voluntarily waive his rights. At the suppression hearing, Dr. Thomas Uttley, a psychiatrist, testified that Victor did not have the capacity to give testimony at that time. [App. 126-27]. This was based on his opinion that Victor had organic brain damage, serious psychiatric problems including depression, was taking psychoactive medication (Zoloft), and had a problem with alcoholism. [App. 129-34]. As a result, in Dr. Uttley's opinion, Victor was disassociated from reality. [App. 151]. "He wasn't in the frame of mind, in my opinion to understand what a right was. So, therefore, it's my opinion that you can't waive voluntarily or involuntarily something you don't have an adequate reality based grasp on." [App. 151]. Dr. Uttley also opined that Victor's condition would lower his guard, his inhibitions, and put him at the mercy of the external stimulus around him. [App. 156-57].

The State then presented the testimony of a psychologist, who reached a contrary conclusion on these facts. The trial court denied the motion to suppress. [App. 5-7].

Victor Brancaccio was first tried in 1995. The jury found Victor Brancaccio guilty of first-degree murder, indicating that verdict was based on a felony murder theory, **not** premeditation. The jury also found Victor Brancaccio guilty of kidnapping with a weapon. He was sentenced to life imprisonment without parole for 25 years.

Victor Brancaccio retained new counsel and appealed. The District Court of Appeal for the State of Florida, Fourth District, reversed Victor's conviction and ordered a new trial because the jury was not instructed on Victor's theory of the defense – that he was suffering from involuntary intoxication caused by his prescription anti-depressant medication. *Brancaccio v. State*, 698 So.2d 597 (Fla. 4th DCA 1997).

While preparing for the second trial, Victor's new defense counsel discovered that the police did not call Victor's parents until after Victor's confession. Defense counsel filed renewed motions to suppress. The trial court held an evidentiary hearing on the renewed motions to suppress on December 21, 1998. [App. 76]. In addition to testimony from the officers involved, the court accepted into evidence transcripts of the hearings on the first motion to suppress. The trial court denied the renewed motion to suppress on the ground that Victor's question ("Have my parents been notified?") was "not an affirmative request to notify his parents prior to questioning," and reaffirmed the prior ruling that the defendant

waived his rights knowingly and voluntarily. [App. 9-11].[3]

This case was retried in January 1999.[4] The jury found Victor Brancaccio guilty of both first-degree felony murder and kidnapping. [App. 14]. The trial court sentenced Victor to life in prison on both counts. He is currently incarcerated.

Victor again appealed to the District Court of Appeal for the State of Florida, Fourth District. Victor argued that the trial court erred in admitting his confession. That court found that a person in Victor's position would have understood Detective Ruether's response to mean that Victor's parents had actually been called, even though the police had no intention of calling his parents. [App. 3]. Despite the fact that the police were, in the court's words, "less than completely honest" with Victor, the court ruled that Victor voluntarily waived his rights. [App. 3-4].

Victor's timely motion for rehearing was denied. [App. 12]. Victor then filed a timely notice of intent to invoke the discretionary jurisdiction of the Supreme Court of Florida. The Supreme Court issued an order denying review without opinion on June 20, 2001. [App. 13].

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[3] Defense counsel renewed the motion by objecting at trial on the grounds that the police failed to notify Victor's parents, that the police lied to Victor, and that Victor's confession was not voluntary. The trial court overruled the objection.

[4] Because the jury in the first trial acquitted Victor of premeditated murder, the State was limited on retrial to first-degree felony murder and kidnapping.

REASONS FOR GRANTING THE PETITION

ADMISSION OF THIS MENTALLY COMPROMISED MINOR'S CONFESSION VIOLATED HIS RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION BECAUSE HIS WAIVER WAS NEITHER KNOWING, INTELLIGENT, NOR VOLUNTARY.

This case presents an issue not squarely addressed by this Court in any major decision for more than twenty years – the validity of a rights waiver and confession by a juvenile. This Court has long recognized the special problems posed by the custodial interrogation of juveniles. With a large percentage of violent crimes committed by juveniles and the states increasingly trying those juveniles as adults, the stakes for our country's children are also increasing.[5] The time is ripe for this Court to reexamine how the constitutional protections of the Fifth, Sixth, and Fourteenth Amendments apply to juveniles.

This case presents the perfect opportunity to do so. In this case, the police were deliberately dishonest to a 16-year-old with severe cognitive and emotional problems, and little experience with the criminal justice system. The police lied about why he was in custody, lied about the evidence against him, and lied about whether his parents had been called. The police isolated him by leaving him in a small interrogation room handcuffed to a chair, refused to answer his questions about why he was there until after he signed the rights waiver form, and

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[5] *See, e.g.*, B. Kaban & A.E. Tobey, *When Police Question Children: Are Protections Adequate?*, 1 J. Center Children & Cts. 151 (1999) [hereinafter Kaban & Tobey].

deliberately delayed notifying his parents until after he had confessed. Under the totality of the circumstances, Victor's waiver of his constitutional rights was neither knowing, intelligent, nor voluntary. Admission of his confession violated Victor Brancaccio's rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution as interpreted by this Court.

This Court first recognized the special status of juveniles in custodial interrogation in *Haley v. Ohio*, 332 U.S. 596 (1948) (plurality). *Haley* involved a 15-year-old boy arrested for robbery and murder. He was questioned by rotating teams of officers all through the night, and held for several days without contact with his parents or the lawyer retained for him by his parents. Not surprisingly, he waived his rights and confessed.

This Court recognized that because of their low level of experience and maturity, minors cannot be judged by the same standards as adults.

> Age 15 is a tender and difficult age for a boy of any race. He cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens. This is the period of great instability which the crisis of adolescence produces.

Id. at 599. This Court noted that children, even more than adults, need the presence of counsel during interrogation to balance the scales.

> He needs someone on whom to lean lest the overpowering presence of the law, as he knows it, crush him. . . . No lawyer stood guard to make sure that the police went so far and no

> farther, to see to it that they stopped short of the point where he became the victim of coercion. No counsel or friend was called during the critical hours of questioning.

Id. at 600. As to the boy's rights waiver, this Court was frankly skeptical:

> But we are told that this boy was advised of his constitutional rights before he signed the confession and that, knowing them, he nevertheless confessed. **That assumes, however, that a boy of fifteen, without aid of counsel, would have a full appreciation of that advice and that on the facts of this record he had a freedom of choice.** We cannot indulge those assumptions. Moreover, we cannot give any weight to recitals which merely formalize constitutional requirements. Formulas of respect for constitutional safeguards cannot prevail over the facts of life which contradict them. They may not become a cloak for inquisitorial practices and make an empty form of the due process of law for which free men fought and died to obtain.

Id. at 601 (emphasis added). This Court reversed the conviction.

Several years later, this Court again emphasized the special need to protect juveniles from the coercive forces of interrogation. In *Gallegos v. Colorado*, 370 U.S. 49 (1962), this Court applied the totality of the circumstances test to review the rights waiver and confession of a 14-year-old boy for murder. Unlike the defendant in *Haley*, this boy was not subjected to prolonged interrogation, although he was held for five days without contact with his mother or a lawyer. Again, this Court rejected the argument that

simply advising a juvenile of his right to counsel and then waiting for that child to ask for an attorney is sufficient.

> The prosecution says that the boy was advised of his right to counsel, but that he did not ask either for a lawyer or for his parents. But a 14-year-old boy, no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accessible only to the police. That is to say, we deal with a person who is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to know how to protect his own interests or how to get the benefits of his constitutional rights.

Id. at 54-55. This Court reaffirmed that a juvenile's lack of experience and maturity require special consideration when determining whether a confession was voluntary, especially where the juvenile did not have the advice of counsel.

> He cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions. He would have no way of knowing what the consequences of his confession were without advice as to his rights – from someone concerned with securing him those rights – and without the aid of more mature judgment as to the steps he should take in the predicament in which he found himself. . . . Without some adult protection against this inequality, a 14-year-old boy would not be able to know, let alone assert, such constitutional rights as he had.

Id. at 54. This Court reversed because "[t]o allow this conviction to stand would, in effect, be to treat him as if he had no constitutional rights." *Id.* at 54-55.

One year after this Court's decision in *Miranda v. Arizona*, 384 U.S. 436 (1966), this Court addressed the confession of a minor in the context of juvenile court proceedings. *In re Gault*, 387 U.S. 1 (1967). This Court stated unequivocally that the Fifth and Sixth Amendment protections apply with equal force to juveniles as to adults. This Court also reiterated that the eliciting and use of confessions or admissions require "careful scrutiny" and "special caution." *Id.* at 44-45. "With respect to juveniles, both common observation and expert opinion emphasize that the 'distrust of confessions made in certain situations' . . . is imperative in the case of children from an early age through adolescence." *Id.* at 48 (citation omitted).

The necessity of handling juvenile interrogations with "special caution" has been confirmed by more recent research. *See* David T. Huang, *Note: "Less Unequal Footing": State Courts' Per Se Rules for Juvenile Waivers During Interrogations and the Case for Their Implementation*, 86 Cornell L. Rev. 437, 439-40 (Jan. 2001); Kaban & Tobey, *supra* note 5.

> Research findings consistently demonstrate that *Miranda* warnings are not well understood by children, especially those 14 and under or older adolescents with low intelligence scores. These vulnerable groups were found to perform significantly more poorly than adults, including adults with low intelligence (when compared to juveniles with low intelligence).

Kaban & Tobey, *supra* note 5, at 155 (footnotes omitted).

Moreover, "[r]esearch findings on the *Miranda* waiver have noted that children may be far more likely to waive their *Miranda* rights than adults." *Id.* "[J]uveniles had the most difficulty with the element of the warning that addressed their right to have an attorney present during questioning." *Id.* Research also confirms that juveniles are at a disadvantage because of the unequal balance of power between the juvenile suspect and the adult authority figure interrogating him or her.

> From early childhood on, children are taught to answer questions directed to them by adults. Police officers often occupy an elevated position of power relative to children. . . . Moreover, research indicates that when an adult interviewer presents himself or herself as authoritarian or unfriendly, children have more difficulty disagreeing with the adult.

Id. (footnotes omitted). In sum, research supports this Court's observations in *Haley* and *Gallegos* that juveniles are particularly susceptible to police interrogation procedures. "[W]e can no longer afford to ignore the impact of even well-intentioned interrogation procedures designed for adults but used with children suspected of committing serious crimes." *Id.* at 151.

This modern research is also fully consistent with how the law treats minors in other contexts. Minors are

generally considered incompetent under the law to contract, marry, smoke, or drink alcohol.[6] It is illogical to treat them exactly like adults when it comes to waiving their constitutional rights – perhaps the most important decision of their lives. *See generally* Elizabeth J. Maykut, *Who is Advising Our Children: Custodial Interrogation of Juveniles in Fla.*, 21 Fla. St. U.L. Rev. 1345 (1994).

After *Gault*, this Court did not explicitly address the issue of juvenile waivers until *Fare v. Michael C.*, 442 U.S. 707 (1979). In *Michael C.*, the police interrogated a 16-year-old murder suspect. After receiving his *Miranda* warnings, the boy asked to see his probation officer. The police refused, but reiterated that he had a right to talk to an attorney.

In *Michael C.*, this Court reaffirmed that "the totality of the circumstances approach is adequate to determine whether there has been a waiver even where the interrogation of juveniles is involved." *Id.* at 725. This Court again recognized that there are "special concerns that are present when young persons, often with limited experience and education and with immature judgment, are involved." *Id.* The totality of the circumstances approach "mandates" inquiring into "**all** circumstances surrounding the interrogation" including "the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and

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[6] At least one judge has noted the exquisite irony that a minor is not competent under the law to contract with the lawyer whose services he waives. *In re Holifield*, 319 So.2d 471, 475 (La.Ct.App. 1975) (Fedoroff, J., concurring).

the consequences of waiving those rights." *Id.* (citing *North Carolina v. Butler*, 441 U.S. 369 (1979)) (emphasis added).

Reviewing the totality of the circumstances in that case, this Court found "no special factors [which] indicate that respondent was unable to understand the nature of his actions." *Id.* at 726.

> He was a 16 1/2-year-old juvenile with considerable experience with the police. He had a record of several arrests. He had served time in a youth camp, and he had been on probation for several years. He was under the full-time supervision of probation authorities. There is no indication that he was of insufficient intelligence to understand the rights he was waiving, or what the consequences of that waiver would be. He was not worn down by improper interrogation tactics or lengthy questioning or by trickery or deceit.

Id.

This Court also ruled that a request to speak to a probation officer was not the equivalent of a request to speak to an attorney. Not only is a probation officer often not a trained legal advisor, but he is an employee of the state which seeks to prosecute the suspect. *Id.* at 719-20.

In sum, this Court has repeatedly recognized the special problems raised by the waivers and confessions of juveniles. This Court has acknowledged that the immaturity and inexperience of juveniles puts them at a great disadvantage during police interrogations, and that special caution must be taken in reviewing the totality of the circumstances surrounding a juvenile's waiver of his

rights in order to insure that the waiver was truly knowing, intelligent, and voluntary. However, this Court's opinion in *Michael C.* also recognizes the fact that some juveniles, such as an adolescent of average intelligence and extensive experience with the criminal justice system, may be on par with an adult in a similar situation, especially where there is no police misconduct.

The totality of the circumstances in this case demonstrate that Victor Brancaccio's waiver of his *Miranda* rights was neither knowing, intelligent, nor voluntary. *See also Moran v. Burbine*, 475 U.S. 412, 421 (1986) (State must prove, under totality of the circumstances, that waiver of *Miranda* rights was "made voluntarily, knowingly and intelligently"). Under this Court's jurisprudence, the first consideration needs to be the defendant's capacity to understand and invoke his rights. This includes inquiry into Victor's age, intelligence, mental and emotional stability, education, background, and experience.

First, unlike the defendant in *Michael C.*, Victor was not even a "normal" or "average" 16-year-old boy at the time of his interrogation.

> Courts may confuse a child's age or physical stature with maturity, yet many youth involved with the legal system are disadvantaged cognitively and emotionally, making them far less mature and astute than their same-age peers. Youths such as these may be just as lost and confused and susceptible to manipulation as young children when confronted by the complexities of the legal system and the coercive context of police questioning.

Kaban & Tobey, *supra* note 5, at 155.

Victor has borderline intelligence, just above the level of mental retardation. [App. 159-61]. He functions as if he is mentally retarded. [App. 159-61]. His ability to reason is also in the retarded range. [App. 160-61].

In addition, Victor is emotionally unstable. Indeed, at the time of the incident Victor had been recently released from a mental hospital where he had been involuntarily committed by the police. [App. 63, 132]. Dr. Uttley testified at the suppression hearing that Victor suffered from organic brain damage, depression, alcoholism, and was taking a powerful psychoactive medication (Zoloft). [App. 129-34]. As a result, in Dr. Uttley's opinion, Victor was disassociated from reality. [App. 151]. "He wasn't in the frame of mind, in my opinion to understand what a right was. So, therefore, it's my opinion that you can't waive voluntarily or involuntarily something you don't have an adequate reality based grasp on." [App. 151].

At trial, psychiatrist Dr. Antoinette Appell also testified to Victor's low cognitive ability and emotional instability. [App. 159-64]. According to Dr. Appell, as a result Victor is highly suggestible:

> People who have the degree of intellectual and school performance impairment that Victor does learn early to agree with authority figures, to parrot back to them what they are told, it keeps them out of trouble and so they learn that. They will take your lead. We see that throughout the educational system, throughout the kinds of patients that I treat. That is why these kids can be described as compliant and cooperative. They tell us what we want to hear.

[App. 163].

With this in mind, the transcript of Victor's rights waiver "discussion" with Detective Beck is extremely disturbing. Beck simply read Victor his rights and after each one asked Victor if he understood. Victor simply said "yes" each time. [App. 16-21]. There is nothing in Victor's responses that indicates he actually understood, and was not just saying what he believed Beck wanted to hear.

Indeed, the transcript is replete with instances indicating Victor did not understand the consequences of his confession. For example, when Beck said, "You do understand that the charges that I'm talking about are murder?" Victor replied, "Yeah," and **laughed**. [App. 30-31]. Then, near the end of his statement, after Victor had confessed to murder, Beck said he was proud of Victor for confessing. Victor said, "I don't want to get in trouble man" and "I just don't, I know I need help cause I felt bad but I don't want to waste my life now you know." [App. 69].[7]

In further contrast with the defendant in *Michael C.*, the record shows that Victor had only limited experience with the criminal justice system. He was not a veteran with numerous prior arrests, convictions, or probation behind him who knew the rules and how the criminal

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[7] The confession itself also shows how little touch Victor had with reality. He told the police that Mrs. Frazier was still alive and conscious when he went back to check the next day, [App. 44], and that after he first hit her she gave him a napkin to wipe the blood from his hands. [App. 73]. This was simply impossible, based on the medical examiner's testimony that Mrs. Frazier would have survived only a few minutes at most.

justice system worked. He had only been arrested once before, for stealing beer. [App. 23]. That incident led to his first involuntary hospitalization.

Without experience in the system, it is unlikely that a minor of Victor's low intelligence would know how to invoke his right to an attorney, or even understand how an attorney could help him. He would not understand the consequences of his confession or his arrest for murder. After all, the only time he had been arrested previously simply resulted in his being placed temporarily in a mental hospital – not life in prison. In sum, Victor Brancaccio's age, low intelligence, emotional instability, and inexperience make it highly unlikely that he was truly able to understand his rights, how to invoke them, or the consequences of waiving them.

Second, Victor was placed in a situation which while not as draconian as that in *Haley* or *Gallegos*, was nonetheless highly coercive. Victor was arrested and transported to the police station in handcuffs. At the police station, he was taken to a small interrogation room and handcuffed to a chair. [App. 120]. Victor waited there for about half an hour with Officer Theede and Detective Ruether. [App. 84].

Victor repeatedly asked why he was in custody, and the police evaded giving him an answer and said that they did not know. [App. 83-85]. This was a lie that kept Victor in the dark about his true position. [App. 83]. The police never told Victor why he was in custody until after he had signed the *Miranda* rights waiver form. [App. 20-22, 85]. Thus, even if Victor had the mental capacity to

understand his rights, he could not knowingly and intelligently waive them when he was not informed of the seriousness of the crime involved.

The police then lied to Victor about whether his parents had been notified that he was in custody. Victor asked the police officers "have my parents been called?" [App. 85, 108]. Detective Ruether assured Victor "it was being taken care of." [App. 85, 108]. A reasonable interpretation of that statement was that Victor's parents were being called. Indeed, Officer Theede, who was present at the time and noted this conversation in his police report, thought that was what Ruether meant.

Yet, not only had Victor's parents not been called, the police had no intention of calling them. [App. 86, 92, 101-02]. Detective Ruether's response was a lie.[8]

Detective Beck, who interrogated Victor, testified that regardless of whether Victor had asked to speak with his parents, Beck would not have contacted them before beginning his questioning. [App. 101-02]. Beck claimed he did not contact Victor's parents because of concerns about destruction of evidence and the safety of officers searching the Brancaccio home. [App. 101-04]. While those concerns may have been valid reasons to delay

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[8] Florida law requires the police to make a meaningful effort to inform parents that their child is in custody. *See* Fla.Stat. § 39.037(2) (1995) (renumbered as Fla.Stat. § 985.207(2) (1997)). Under Florida law, failure to comply with this statute does not, by itself, mandate exclusion of a minor defendant's subsequent confession, although it may be considered in determining if a waiver is voluntary. *See Ramirez v. State*, 739 So.2d 568 (Fla. 1999).

notifying Victor's parents, this does not explain why Beck could not wait to begin interrogating Victor until after Victor's parents could safely be notified and Victor had a chance to speak to them.

Instead, Beck began interrogating Victor before his fellow officers served the search warrant at the Brancaccio home. [App. 97-98]. After Victor confessed, Beck called the Brancaccio home. [App. 105]. At that time the search was still ongoing. [App. 105]. Thus, it was only after Victor confessed that Victor's parents were notified that their son was in custody.

By these actions, the police deliberately isolated Victor from his parents until they had a chance to interrogate him and obtain a confession. Victor did not have the support or advice of any adult – neither an attorney nor his parents – before or during the interrogation. Conceptually, this is no different from the situations in *Haley* and *Gallegos*. While this interrogation did not last all night, nor the isolation continue for several days, it lasted long enough. If Victor had not succumbed to the police interrogation tactics so soon, there is no telling how long the police would have kept him isolated.

Moreover, the effect of this deception on this vulnerable individual may have been even more insidious. At the time of his interrogation,Victor had essentially been told that his parents had been notified that he was in custody. Yet, his parents had not arrived to help him. To a boy of his low intelligence and emotional instability this could be devastating. He may well have believed his parents had abandoned him.

It is true that Victor did not request an attorney. However, given Victor's age, low intelligence, emotional instability, and inexperience, it is unlikely he would really understand either how to invoke that right or why it would be necessary. *See Gallegos*. The detectives had a senior prosecutor in the interrogation room to counsel them in their questioning. [App. 16]. Victor had no one.

Moreover, Detective Beck cunningly manipulated this highly suggestible teenager – leading him step-by-step through his confession. It was Beck who first offered a chronology of the incident – before Victor had confessed. [App. 34]. During the interrogation, Beck also cajoled Victor into confessing by making comforting statements like "it's gonna be a lot better for everybody involved in this including yourself, so let's just get this out." [App. 21-22]. Beck also lied to Victor about the evidence against him – saying that Victor had left fingerprints on the body and that the police had witnesses they did not really have. [App. 22, 34]. These tactics played on Victor's inexperience and emotional and mental vulnerability. The effect is clear: Immediately after Beck lied about the fingerprints, Victor confessed. [App. 34].

The entire confrontation between Victor and the police was a series of lies. The police manipulated Victor by isolating him from his parents, lying to him, letting him think his parents had abandoned him, and playing on Victor's mental and emotional vulnerability. These lies deluded Victor about his true position and exerted an improper influence on his mind. This is precisely the type of trickery and deceit absent in *Michael C.* Especially given Victor's age, low intelligence, emotional instability, and inexperience, these circumstances indicate that Victor

Brancaccio's waiver of his *Miranda* rights could not have been knowing, intelligent, or voluntary.

The Florida District Court agreed that "the police were less than completely honest" with Victor, and that Victor would reasonably have understood Detective Ruether's response to mean that his parents had been called, but nonetheless ruled that Victor's waiver was voluntary. The basis for the court's decision was apparently a review of the audio tape of Victor's confession – the transcript of which is attached in the appendix. [App. 16]; *see* App. 1-4. However, nothing in that interview indicates Victor actually understood his rights or the consequences of waiving them. Beck asked Victor if he understood his rights, and Victor said "yes." Then the interrogation moved on. Moreover, the court did not address any specific circumstances relating to Victor's age, intelligence, background, experience, or emotional instability. The court simply stated in a conclusory fashion that these factors supported the trial judge's admission of the confession. [App. 1-2].

This Court should review the facts *de novo*. *See Miller v. Fenton*, 474 U.S. 104, 109 (1985). This Court has ruled that **all** the circumstances, but particularly the defendant's age, intelligence, background, education, and experience **must** be considered when reviewing a claim that a rights waiver and subsequent confession were voluntary. This Court has also ruled that special care must be taken when reviewing the voluntariness of a juvenile's confession. The totality of the circumstances of this case show that Victor Brancaccio's confession was improperly

admitted at trial, in violation of his rights under the Fifth, Sixth, and Fourteenth Amendments. As this confession was the primary evidence against him, Victor Brancaccio's conviction cannot stand.

CONCLUSION

For the reasons stated above, VICTOR BRANCACCIO respectfully petitions this Court for a writ of certiorari.

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ROY BLACK, ESQ.
CHRISTINE M. NG, ESQ.
Attorneys for Petitioner
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IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA

FOURTH DISTRICT JULY TERM 2000

VICTOR BRANCACCIO,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO. 4D99-1100

Opinion filed November 22, 2000

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; C. Pfeiffer Trowbridge, Judge; L.T. Case No. 93-1592 CF.

Roy Black and Christine M. Ng of Black, Srebnick & Kornspan, P.A., Miami, for appellant.

Robert A. Butterworth, Attorney General, Tallahassee, and Marrett W. Hanna, Assistant Attorney General, West Palm Beach, for appellee.

FARMER, J.

The principal issue on appeal is whether the trial court erred in admitting a confession into evidence. Our review of the record discloses that there was evidence that this juvenile's confession was voluntarily given. The police administered *Miranda* warnings before actual questioning began. His age, intelligence, education, and background support the trial court's finding that he had the

mental capacity to understand what he was doing and that his waiver of *Miranda* rights was knowing and voluntary. The record supports the finding that the police did not use any improper coercion in obtaining the confession, that they did not promise him anything in exchange for the confession.[1] While his parents were not notified until after the confession, and he did ask if they had been called before he confessed, the facts support the trial court's finding that he voluntarily confessed despite their absence. He executed a written waiver form before actual questioning began.

Ultimately the question whether a confession is voluntary presents a legal issue to an appellate court, one that is determined de novo under federal constitutional principles. *See Miller v. Fenton*, 474 U.S. 104, 109 (1985) (ultimate issue of voluntariness is legal question requiring independent federal determination); *Ramirez v. State*, 739 So. 2d 568, 575 (Fla. 1999) (legal question of voluntariness of confession determined by totality of circumstances), *cert. denied*, 120 S.Ct. 970 (2000); *W.M. v. State*, 585 So. 2d 979 (Fla. 4th DCA 1991) (same). Applying these standards, the confession survives appellate constitutional scrutiny.

For a juvenile's confession, the relevant circumstances include: (a) the manner in which the police administered *Miranda* rights, (b) the juvenile's age, experience, education, background and intelligence, (c) whether the juvenile had an opportunity to speak with

---

[1] We ourselves have listened to the audio tape of the waiver of *Miranda* rights and the confession itself and conclude that it supports the findings of the trial judge.

his/her parents before confession, and (d) whether the juvenile executed a written waiver of the *Miranda* rights prior to making the confession. *Ramirez*, 739 So. 2d at 575-578. We have considered all these factors but will belabor only the following.

In this case, defendant inquired (before the waiver of rights was given) as to whether his parents had been notified. The police responded by saying: "it's being taken care of."[2] In fact the police had no intention of calling his parents, for fear they might disturb evidence at the boy's home. We recognize that:

> "[i]t is simply inappropriate for the police to make a representation intended to lull a young defendant into a false sense of security and calculated to delude him as to his true position at the very moment that the *Miranda* warnings are about to be administered."

Ramirez, 739 So. 2d at 577. In this instance, however, there was no such police conduct. We do agree with defense counsel's argument that the police were less than completely honest in their response to this inquiry. Nevertheless, the audio tape supports the finding that in substance defendant did not actually ask for his parents to be present and that he voluntarily confessed anyway.[3] We

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[2] Strictly speaking, the response does not positively assert that the police had actually called the parents. In context, however, a person in the position of defendant might reasonably have so understood it.

[3] While the response was less than forthcoming, the circumstances here are not like those in *Almeida v. State*, 737 So. 2d 520 (Fla. 1999), where in response to the question "what good

have concluded from our own review of the audiotape that this particular disingenuousness did not affect the voluntariness of the waiver and confession.[4]

As for defendant's claim of error in the jury learning that the court had denied his pretrial motion to suppress the confession, we conclude that there has been no showing of error. The issue as to whether police have complied with the parental notification statute[5] was a legal question for the court in deciding whether to permit the confession to be adduced as evidence before the jury. The record supports the state's assertion that the court fully permitted defendant to litigate the factual question of voluntariness at trial. In the court's final instructions to the jury, the court clearly told the jury that they were to determine the confession's voluntariness based on the totality of the circumstances.

AFFIRMED.

GUNTHER and GROSS, JJ., concur.

NOT FINAL UNTIL DISPOSITION OF ANY TIMELY FILED MOTION FOR REHEARING.

---

is a lawyer going to do?" the police ignored the question and proceeded with their inquiries. If the police in this case had ignored a question like "can I have my parents here before we talk?", we would then be confronting the functional equivalent of *Almeida*.

[4] We agree that there was substantial evidence of the corpus delicti of the crime to admit the confession. *Schwab v. State*, 636 So. 2d 3 (Fla. 1994), *cert. denied*, 513 U.S 950 (1994); *State v. Allen*, 335 So. 2d 823, 825 (Fla. 1976).

[5] *See now* § 985.207(2), Fla. Stat. (1999) (formerly § 39.037).

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT IN AND FOR ST. LUCIE COUNTY STATE OF FLORIDA

CASE NO. 93-1592-CF

STATE OF FLORIDA,

Plaintiff,

vs

VICTOR BRANCACCIO,

Defendant.

_____/

ORDER ON DEFENDANT'S RENEWED MOTION TO SUPPRESS

The only issue presented in the defendant's motion concerns the defense contention that the defendant requested the police officers contact his parents prior to initiating their interview with him. The defense argues that this additional evidence shows that the defendant's statements were not voluntarily made and should be suppressed. The evidence presented at the hearing reflects that prior to his interview the defendant asked whether his parents had been notified. The defense argues that this statement constitutes an affirmative request to speak to his parents and that pursuant to *Dowst v. State,* 336 So.2d 375 (Fla. 1st DCA, 1976) and *Sublette v. State,* 365 So. 2d 775 (Fla. 3rd DCA, 1978), the defendant's statements should be suppressed.

Based on the evidence presented the court finds that the defendant's statement ("Have my parents been notified?" constitutes a question and not an affirmative

request to notify his parents prior to questioning. In fact, this conclusion is bolstered [sic] the defendant's statement starting on page 46 where the following occurred:

Beck: Victor do you have any questions for me?

Victor: No, is my mom gonna be notified

Beck: I'm gonna call your mom right now, yeah okay

Victor: How ya gonna bring it out to her I mean you just going to be like your son murdered somebody?

Beck: Well I'm going to try to break it as easy as I can, okay

Victor: I have a feeling that see my mom, I don't know she's a nervous woman

Beck: You think she is going to have problems?

Victor: She might pass away.

Beck: Why?

Victor: I don't know (laughs) She gets sick easy

Beck: You just afraid of that or what?

Victor: yeah (mumbling)

Beck: Okay, well we will try to be as gentle as we can

Victor: Why don't you tell my dad first

Beck: We'll try to do that, okay? Where is your dad at now?

Victor: He's at work, oh no don't tell my dad first tell my mom cause he's working

Beck: I'll try to tell your mom first and try to be as gentle as we can

Victor: Cause my dad's working he'll drop that big load on him now

Based on all the evidence the court finds nothing to change the conclusions found by Judge Harper on March 23, 1994, that the defendant "freely and voluntarily, intelligently and knowingly gave up his right to be represented by an attorney. This was all done without threat or promise.".

It is therefore;

ORDERED AND ADJUDGED that the defendant's Renewed Motion to Suppress Statements is hereby **DENIED.**

DONE AND ORDERED in chambers, Vero Beach, Indian River County, Florida, this 22 day of December 1998.

/s/ Paul B. Kanarek
PAUL B. KANAREK
Circuit Judge

cc: Roy Black, Esquire
Lawrence Mirman, ASA

IN THE CIRCUIT COURT OF
THE NINETEENTH JUDICIAL
CIRCUIT, IN AND FOR ST.
LUCIE COUNTY, FLORIDA

Case No. 93-1592-CF

THE STATE OF FLORIDA,
Plaintiff,
vs.
VICTOR BRANCACCIO,
Defendant.

VOLUME II

EXCERPT OF PROCEEDINGS

(Motion To Suppress Statement of Defendant)

This cause came on for a jury trial before the Hon. Carl Harper, Judge of the above court, at the St. Lucie County Courthouse Annex, Port St. Lucie, Florida, beginning at 8:25 A.M. on the 23rd day of March, 1994.

The appearances at said time and place were as follows:

FOR THE PLAINTIFF: STATE ATTORNEY'S OFFICE
411 South Second Street
Fort Pierce, Fl. 34950
BY: DIANA ACOSTA, ESQUIRE
DAVID MORGAN, ESQUIRE

FOR THE DEFENDANT: BLAKE, TORRES & MULLER, P.A.
500 South U.S. Highway One
Fort Pierce, Fl. 34950
BY: JUAN F. TORRES, III, ESQUIRE

* * *

[348] THE COURT: And I don't need the argument from you, sir, because I'm going to deny the motion to suppress the statement. I listened to the tape. I went through it very carefully. My whole lunch hour I listened to it. I did not see one single thing wrong that the police officer did in so far as his interview of this defendant. There were no improper interrogation techniques that were employed. There was no hostile environment involved. Both of them spoke in a soft, casual tone of voice. It was a very pleasant [349] conversation.

I find, based on the totality of the circumstances surrounding the giving of this statement, including the defendant's youth, his medical background, his, quote, immaturity, his previous hospitalization, medication that he was on, I find that this defendant had an intelligent understanding of his Miranda rights.

To his credit, Detective Beck read the full panoply of the Miranda rights to Mr. Brancaccio on at least three different occasions, two of which were on the tape, I think. I know one of them was on the tape. And two of which were before. Anyway, he read it to him three times and each time the Defendant acknowledged that he understood those rights.

I'm satisfied that this defendant had an intelligent understanding of his right to remain silent and his right to have an attorney present. He freely and voluntarily, intelligently and knowingly gave up his right to remain silent and his right to be represented by an attorney. This was all done without threat or promise. There was no impermissible, psychological persuasion involved in this case. And the testimony of Dr. Utley's [350] opinion to the contrary not withstanding. I do not find his testimony to be persuasive in that respect.

So the motion is denied. That's on the authority of Colorado versus Connelly, Miranda versus Arizona and its progeny. That pretty well takes care of that motion. That's the last motion that I have, I believe. Isn't it, Mr. Prosecutor?

MR. MORGAN: Yes, sir.

THE COURT: Now, I have made that preliminary determination about the statement being voluntary from a legal standpoint. That's a legal factual determination that I made. Still the trial jury will make that determination. They may not agree with me. Because I will tell that jury if they find that the statement was not freely and voluntarily given that they should totally disregard the statement. That's what I will tell them in the final hearing. So they can determine that issue themselves. They can reject that statement if they choose to. Okay?

MR. MORGAN: Your Honor, I'm not sure –

THE COURT: That's an instruction. That's a standard instruction.

MR. MORGAN: I was going to change the [351] subject if you were done. I'm sorry if you weren't.

THE COURT: Okay.

* * *

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX 3315,
WEST PALM BEACH, FL 33402

January 4, 2001

CASE NO.: 4D99-1100
L.T.No. : 93-1592 CF

Victor Brancaccio v. State Of Florida

Appellant / Petitioner(s), Appellee / Respondent(s).

BY ORDER OF THE COURT:

ORDERED that appellant's motion filed December 7, 2000, for rehearing, clarification and/or certification is hereby denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Roy E. Black Attorney General-W.P.B.

mg

/s/ Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal

[SEAL]

Supreme Court of Florida

WEDNESDAY, JUNE 20, 2001

CASE NO.: SC01-360
Lower Tribunal No.: 4D99-1100

VICTOR BRANCACCIO vs. STATE OF FLORIDA

Petitioner(s) Respondent(s)

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. *See* Fla. R. App. P. 9.330(d).

WELLS, C.J., and SHAW, HARDING, ANSTEAD and PARIENTE, JJ., concur.

A True Copy
Test:

/s/ Thomas D. Hall
Thomas D. Hall
Clerk, Supreme Court

[LOGO]

bh
Served:

CHRISTINE M. NG
ROY E. BLACK
CELIA A. TERENZIO
MARRETT W. HANNA
HON. MARILYN BEUTTENMULLER, CLERK
HON. C. PFEIFFER TROWBRIDGE, SENIOR JUDGE
HON. JOANNE HOLMAN, CLERK

☐ Probation Violator

☐ Community Control Violator

☑ Retrial

☐ Resentence

☐ Amended

IN THE CIRCUIT COURT,
NINETEENTH JUDICIAL CIRCUIT,
IN AND FOR ST. LUCIE COUNTY, FLORIDA

CRIMINAL DIVISION

CASE NUMBER 93-1592CF

STATE OF FLORIDA

vs.

Victor Brancaccio
Defendant

JUDGMENT

The Defendant, Victor Brancaccio, being personally before this Court represented by Timothy Schulz, the attorney of record, and the State represented by Lynn Park, and having:

☑ been tried and found guilty by ☑ Jury / ☐ Court of the following crime(s)

☐ entered a plea of guilty to the following crime(s)

☐ entered a plea of nolo contendere to the following crime(s)

COUNT	CRIME	OFFENSE STATUTE NUMBER(S)	DEGREE OF CRIME	OBTS NUMBER
I	First Degree Murder	782.04(1)	capital	4807730
II	Kidnapping With a Weapon	775.087(1) & 787.01	FIPBL	4807730

CIRCUIT & COUNTY COURTS CLERK ST. LUCIE COUNTY, FLORIDA

'99 MAR 19 P2:10

DISTRICT ATTY

'99 MAR 17 A10:10

JOHN E. THOMAS CLERK CIRCUIT COURT

☑ and no cause being shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the Defendant is hereby ADJUDICATED GUILTY of the above crime(s).

☐ and pursuant to section 943.325, Florida Statutes, having been convicted of attempts or offenses relating to sexual battery (ch. 794) or lewd and lascivious conduct (ch. 800) the Defendant shall be required to submit blood specimens.

☐ and good cause being shown; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

1983

Circuit Ct. Min.

BEST AVAILABLE COPY

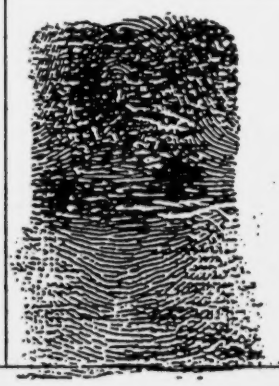
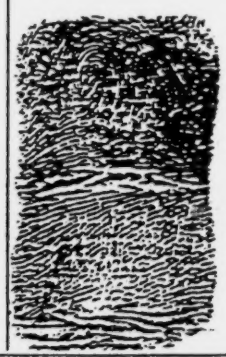
'99 FEB 26 PM 4 11

CLERK CIRCUIT COURT

The Defendant in open Court was advised of the right to appeal from this Sentence by filing notice of appeal within 30 da from this date with the Clerk of this Court and the Defendant's right to the assistance of counsel in taking the appeal at the exper of the State on showing of indigency.

JUDGE

FINGERPRINTS OF DEFENDANT

1. Right Thumb	2. Right Index	3. Right Middle	4. Right Ring	5. Right Little
6. Left Thumb	7. Left Index	8. Left Middle	9. Left Ring	10. Left Little
				

Fingerprints taken by: D.B. Porter 985 — Name

Deputy SLSO — Title

I HEREBY CERTIFY that the above and foregoing fingerprints are the fingerprints of the Defendant, Victor Brancaccio and that they were placed thereon by said Defendant in my presence in open Court this dat

DONE AND ORDERED in open Court at St. Lucie County, Florida, this 19 day of February A.D., 199 9

JUDGE

1984

Circuit Ct. Mi

CITY OF PORT ST. LUCIE
POLICE DEPARTMENT
TAPED STATEMENT

PSLPD Case #933-06-0483

Detective Beck Beck [sic] taped interview with Victor Branaccio June 14, 1993 – Time approximately 10:12 a.m.; present in the room is Victor Branaccio, Detective Tom Reuther, PSLPD and myself as well as Mr. Ken Kugler from the State Attorney's Office, Fort Pierce, FL

Beck: Victor, do you mind if I call you Victor, Vic or what do you like?

Victor: Victor

Beck: Victor you have the right to remain silent, do you understand that?

Victor: Yeah

Beck: Anything you say can be used against you in court, do you understand that?

Victor: Yeah.

Beck: You have the right to talk to a lawyer for advice before we ask you any questions and have him with you during questioning if you wish, do you understand that?

Victor: Yes.

Beck: If you can not afford a lawyer one will be appointed to you before any questioning if you wish, do you understand that?

Victor: Yes.

Beck: If you decide to answer questions now without a lawyer present you will still have the right to stop answering at any time. You also have the right stop answering at any time until you talk to a lawyer, do you understand that.

Victor: Yes

Beck: Do you understand each of these rights that I have just explained to you?

Victor: Yes

[2] Beck: With these rights in mind do you wish to talk to me now?

Victor: Yes

Beck: Okay, very good. Alright first part is out of the way okay. Alright.

Tom: You want me to get a form.

Beck: Alright Tom. Thanks.

Beck: So what's going on today man?

Victor: Just woke up going to work suppose to be my day off.

Beck: Where do you work?

Victor: Lawn business. My parents own a few pizza places but I work for a lawn business.

Beck: Yeah.

Victor: Yeah.

Beck: You got your hands all scarred up man, what's that from?

Victor: Taking tests

Beck: Cigarette burns.

Victor: uhm.

Beck: How come?

Victor: Before I went to the Savannah's.

Beck: Yeah

Victor: I used to hang out with the wrong crowd.

Beck: Yeah.

Victor: And I used to, I used to get wasted and . . .

Beck: You got some on the other hand too?

Victor: Uh-uh

Beck: Let me see. . . .

[3]Beck: You gonna behave yourself so I can take those handcuffs off of you . . .

Victor: Chuckles. yeah.

Beck: Okay.

Victor: You've got your handcuff key, you are a FSU fan, huh

Beck: Are you a FSU fan?

Victor: Yup. Everybody in my family is, everybody on my dad's part of the family is.

Beck: That will make things more comfortable, alright.

Victor: Thanks.

Beck: You promise you're going to behave yourself, right.

Victor: I promise

Beck: Okay.

Victor: Unintelligible Hear ya go

Beck: Thank you very much. Victor what these are, are the same questions that I just asked you, okay.

Victor: okay

Beck: How do you spell your last name?

Victor: B R A N C A C C I O

Beck: How do you pronounce that?

Victor: Brancaccio (pronouces [sic] name)

Beck: Okay, Victor before I ask you any questions I want to advise your rights under law, do you understand that I am a police officer?

Victor: Yeah.

Beck: I've explained that to you.

Victor: Yeah

Beck: And you do understand that you have the right to remain silent?

[4] Victor: Yeah.

Beck: Okay. And you do understand that you have the right to talk an attorney and have him with you before we ask you any questions, you understand that?

Victor: Yeah.

Beck: Just repeated the same process, okay?

Victor: Chuckles, okay.

Beck: If you cannot afford a lawyer, to retain your own attorney and you want an attorney one

will be appointed for you before we ask you any questions.

Victor: Yeah -

Beck: Do you understand that. If you decide to answer the questions now without an attorney present you will still have the right to stop answering my questions at any time until you talk to an attorney, understand that?

Victor: Yes.

Beck: Okay, kind of repetitive aren't we? Knowing and understanding your rights as I have explained them to you are you willing to answer my questions without an attorney present?

Victor: Yes.

Beck: Should you talk to me anything you might answer to my question will be introduced into evidence in court, in a court of law against you, do you understand that?

Victor: Can you repeat that please?

Beck: Should you talk to me, anything you might answer to my questions will be introduced into evidence in a court of law against you, do you understand that?

Victor: Yeah.

Beck: Okay, you understand each of these rights?

Victor: Yeah.

Beck: Do me a favor?

[5] Victor: Sign my name.

Beck: Just go ahead and print your name right here.

Victor: Uhm-uhm and sign it?

Beck: Or actually just go ahead and sign your name right here Print and then sign. Enough room?

Victor: Uhm-uhm.

Beck: Cool. Thanks.

Victor: Uhm-uhm.

Beck: Victor do you understand what you've just signed. The paperwork that I've just showed you.

Victor: Yeah.

Beck: You do, go ahead and if you could speak audio please

Victor: Yes

Beck: Okay. Victor do you know why we are here?

Victor: No

Beck: We've got a problem. Alright. You know what the problem is.

Victor: I don't know what the problem is.

Beck: Victor we found some stuff that will bring you into a crime scene, okay, I think you know exactly what I'm talking about.

Victor: I don't know what you're talking about for real.

Beck: Okay. It's gonna be alot better for everybody involved in this including yourself so let's

just get this out, alright. I understand that you had an arguement [sic] and I understand that the arguement [sic] led to something that you did not want to happen.

Victor: Wait a minute what are you talking about.

Beck: I'm talking about with the old lady.

Victor: The old lady.

[6] Beck: Yeah, Victor I know

Victor: This is all new to me, what are you talking about?

Beck: Okay, well what I'm talking about is first degree murder, Victor.

Victor: I swear to God I did not murder anybody.

Beck: Victor don't swear to God

Victor: I promise you I did not murder anybody

Beck: Victor, don't swear to God, alright.

Victor: Well what more can I tell you to make you believe me

Beck: Nothing cause I know you did

Victor: Okay

Beck: I've got witnesses in your neighborhood that saw you going over the berm, I've got witnesses in your neighborhood that saw you carrying a spray paint can. Okay. So why don't we talk alright. Why don't we just go ahead and talk

Victor: Alright.

Beck: Okay. Victor why don't we talk about Friday night

Victor: Alright

Beck: Last Friday.

Victor: Alright alright

Beck: Two nights ago, three nights ago

Victor: (deep sigh)

Beck: Why don't you tell me how the day started.

Victor: Trying to remember, can you, you said we had an arguement

Beck: I'm trying to just talk about Friday night. I'm talking about Friday night? Did you work Friday?

Victor: At the Pizza Shop?

Beck: Any place

[7] Victor: I think I worked with my dad if I'm not mistaken at the Pizza shop.

Beck: Did ya? Victor what have you been arrested for in the past?

Victor: I stole liquor, no liquor beer.

Beck: Yeah what else

Victor: That's it

Beck: Did they take your fingerprints?

Victor: Yes.

Beck: So you did work Friday.

Victor: I think I worked, I'm not, I'm trying think if I worked Friday or Saturday. I know I worked sometime this week with my dad, helped him out cause my brother wasn't there.

Beck: Yeah. Your brother Albert?

Victor: Yeah.

Beck: Yeah.

Victor: You know my brother

Beck: So you don't know if you worked Friday or not?

Victor: I either worked Friday or Saturday, but I'm pretty sure it was Friday.

Beck: It wasn't Saturday?

Victor: Na I don't think it was.

Beck: No I know it wasn't.

Victor: When was it?

Beck: ummm

Victor: I know I worked Friday or Saturday

Beck: What time did you get off Friday.

Victor: When it closed.

[8] Beck: What time was that?

Victor: Eleven.

Beck: Eleven o'clock. What store did you work in?

Victor: My dad's Roma West.

Beck: Roma West in St. Lucie West?

Victor: Yes

Beck: Who was there with ya?

Victor: Who was working?

Beck: Uhm-uhm

Victor: Me, my dad, my mom, this girl Betty and this kid Jack. The cook Joe and two of the waitresses.

Beck: (sigh) and you didn't work Friday night either. I know that for a fact.

Victor: I didn't Friday with my dad.

Beck: You didn't work Friday night?

Victor: I helped him out Friday or Saturday, I'm telling you, it was either Friday or Saturday, then I went out.

Beck: Where did you go to?

Victor: I went to this girls house.

Beck: Who?

Victor: Christin

Beck: Christin who?

Victor: Her last name was like Bumparado (phonetic).

Beck: Where does she live?

Victor: I didn't go to her house I went to her friend's house, Tina, but I was with Christin.

Beck: Where does Tina live?

Victor: By Club Med.

[9] Beck: By Club Med, and that was Friday night?

Beck: Yeah,

Victor: I don't know if it was Friday.

Beck: Are you taking any medications now Victor?

Victor: Yes I am.

Beck: What kind of medications you taking?

Victor: Zolupf (phonetic)

Beck: Zolupf (phonetic). What's that for?

Victor: For anti-depressant.

Beck: Anti-depressant?

Victor: Yeah

Beck: Yeah. What were you in the Savannah's for.

Victor: Cause I was depressed and I had an attitude with my mom, uhm-uhm I was running away alot, my mom was getting scared and I was hanging around with the wrong crowd. Uhm I tried drugs and alcohol a few times so they, before it became a problem they wanted, and I was having problems with this girl so they wanted to put me away for awhile.

Beck: Where you drinking alcohol Friday night?

Victor: Friday?

Beck: uh-uh

Victor: No.

Beck: Do you want to be honest with me.

Victor: I wasn't drinking alcohol Friday

Beck: So we can go ahead and just get this thing fixed

Victor: I drank alcohol last week when my parents knew about it.

Beck: Yeah

Victor: hmmm

[10] Beck: You suppose to drink with the medications you take?

Victor: Uh-uh (laughs)

Beck: No

Victor: uh-uh

Beck: What were you drinking?

Victor: Beer.

Beck: Beer? Where at?

Victor: My house.

Beck: At your house? Okay.

Victor: There were four (4) beers in the refrigerator, and I drank all four (4) of them.

Beck: And when was that, do you remember?

Victor: Last week or the week after.

Beck: You don't remember when?

Victor: No I just remember getting in trouble for it.

Beck: You don't know if it was three (3) days ago or if it was a month ago.

Victor: Oh no I know it wasn't three (3) days ago it was like a week and half ago week in a half or two weeks ago, cause my parents took me to the Doctor too cause I see a Doctor every week, every Thursday.

Beck: What other days did you go to the Doctor.

Victor: That's it only on Thursdays.

Beck: Do you have any out-patient care at the Savannah's

Victor: Yeah that's what it is

Beck: When is that?

Victor: Thursday.

Beck: That's on Thursdays

[11] Victor: Yeah I see Dr. Bergman in Stuart.

Beck: Did you have a meeting last Saturday?

Victor: A meeting?

Beck: Doctor's appointment last Saturday?

Victor: Na, no, not a Doctor's appointment, no

Beck: What did you have Saturday night did ya have an appointment with your mom, someplace that you mom took you Saturday night.

Victor: No

Beck: No. Saturday afternoon?

Victor: No

Beck: No

Victor: No, I went to a meeting Saturday night.

Beck: That's what I'm talking about Saturday night.

Victor: Alcohol Anonymous Meeting that kind of

Beck: Is that what it is?

Victor: Yeah. At Savannah's

Beck: What time is that?

Victor: 7:30 to 8:30

Beck: 7:30 to 8:30? (Sighs) Victor let's go ahead and talk about Friday again,

Victor: Okay

Beck: Try hard to remember because it is important.

Victor: This Friday, last Friday.

Beck: Yeah three days ago, okay.

Victor: I, I didn't work Friday.

Beck: You didn't?

[12] Victor: I went to that girls house, Christin.

Beck: That was Friday.

Victor: I though you were talking about last Friday.

Beck: No this Friday, just three days ago you went to Christin's house.

Victor: That girl Tina's with Christin.

Beck: What time were you there?

Victor: ummm lets see she came down here about 8 and then we stayed there till about 12 and then she brought me home.

Beck: Is that right?

Victor: Yeah.

Beck: How can I get in touch with this girl Tina?

Victor: Um call her I guess.

Beck: You got a phone number?

Victor: Yeah.

Beck: What is it?

Victor: 335-2975

Beck: Do you know Tina's last name?

Victor: Penderretus

Beck: Penderretus?

Victor: Yeah would you like Christin's phone number too?

Beck: Yeah that would be fine.

Victor: 878-3574

Beck: How do you know Tina and Christin?

Victor: They went to my brother's school and Christin used to work with my parents as a waitress.

Beck: Yeah.

[13] Victor: ummm and every time my brother had parties I mean they came over and I knew em and then I just started hangin out with em.

Beck: The medication that you take does if affect your ability to understand what you are doing? Does it affect ya, do you know what you are doing?

Victor: Sometimes.

Beck: Like right now.

Victor: Yeah I know what I'm doing.

Beck: You do understand that I'm a police officer?

Victor: Yeah (laughs).

Beck: You do understand that the charges that I'm talking about are murder?

Victor: Yeah (laughs).

Beck: You understand that?

Victor: Yeah.

Beck: Okay. Have you had anything to drink today?

Victor: Nothing.

Beck: Any alcoholic beverages at all today?

Victor: No.

Beck: When was the last time you had a drink?

Victor: Alcohol?

Beck: uhm-uhm

Victor: Last week.

Beck: Last week do you remember when?

Victor: Thursday.

Beck: Thursday.

Victor: Thursday.

[14] Beck: Thursday or Friday?

Victor: Thursday.

Beck: Thursday, were you drinking with Christin and Tina

Victor: No they don't drink around me at all.

Beck: Okay. How old are Christin and Tina?

Victor: 18.

Beck: They are both 18?

Victor: Yes.

Beck: Okay. Do you remember Friday night at all?

Victor: Yes.

Beck: Okay. What did you guys do?

Victor: Well went to her house and then we went and bought ice cream ummm we ordered pizza from Big Apple and we and then I took a shower and we were just hanging out joking around at her house.

Beck: At her house?

Victor: At Tina's house and we were watching this show that was on MTV and then 12 came oh know her friend came.

Beck: Okay who is her friend,

Victor: Christin's cousin, Tina's friend, and we were talking with her for a little while and then she brought me home, Christin and her cousin at 12.

Beck: So when I get out of here and I call Christin and Tina that's what they are going to tell me?

Victor: Yeah you want to call em.

Beck: Yeah I'm going to.

Victor: Okay.

Beck: What did you do afterwards that night?

Victor: Went home.

[15] Beck: How did you get there?

Victor: By Christin and her cousin.

Beck: They drove you home?

Victor: Yes.

Beck: Where did they drop you off?

Victor: At my house.

Beck: Did they come inside with ya?

Victor: No they just dropped me off.

Beck: Okay where did you go afterwards?

Victor: In the house.

Beck: Is that right?

Victor: Yeah I was with my parents, my parents were home.

Beck: Okay Victor what you did was serious.

Victor: I didn't do it.

Beck: What didn't you do?

Victor: Whatever your [sic] talking about.

Beck: Alright yeah you did.

Victor: (laughs) I did?

Beck: Yeah.

Victor: You think what you want to think I didn't do it.

Beck: Alright so who did it?

Victor: I don't know what you are even talking about? You said first degree murder I'm not that type kid person first of all my mom can tell ya about that, and I never I don't even have the guts to kill anybody.

Beck: You did.

Victor: Okay I did.

[16] Beck: Uhm-uhm. Do you know a spray paint? Do you know that that spray paint is enamel? And actually spray paint acts as an adherent to oils? Do you know what oils are?

Victor: Oils?

Beck: You know what fingerprints are made of?

Victor: Oil.

Beck: Fingerprints are made out of oils that conduct the ridges in the skin. Do you know that spray paint that you used to cover the fingerprints.

Victor: You know I didn't do it.

Beck: Actually brought the fingerprints out.

Victor: I didn't do it.

Beck: Yeah, Victor you did. Yeah you did.

Victor: No I didn't.

Beck: (sighs) You were walking down the road and the lady said something to you and you got mad, she pissed you off, she was giving you shit, she pissed you off and you wacked her, you punched her one time in the head, she told you she was going to call the police, you grabbed her and you dragged her up over the berm, back into the field, and you beat her to death, the next day you went back out to her and you think she was still breathing, matter of fact she was still breathing, she was still alive you asked her if she wanted help she couldn't answer you.

Victor: I gotta tell you the truth man I can't sit here and lie to ya.

Beck: Okay Victor let's talk, okay.

Victor: It did happen.

Beck: Why don't we start with Friday night, Okay.

Victor: but really Friday I'm telling ya the truth though that's really what happened.

Beck: Okay.

Victor: But you know I felt bad for her.

[17] Beck: Okay, why don't we talk about what happened Victor.

Victor: Alright.

Beck: Okay, go ahead tell me about what happened.

Victor: I was walkin.

Beck: When?

Victor: (sighed) sometime last week, a couple days ago and she was saying something to me and she said something to me she just kept, I guess I was cursing or something I was rappin to my music and all and she told me to talk to myself or something like that, so I told her to shut up and then umm and then I was just feeling very depressed and cause I got in an arguement with my mom and I just came out of my room said I was gonna go for a walk and then I um she just said something to me and I told her to shut up and she kept telling me that I was low class stuff cause thats a high class neighborhood and I shouldn't be doing that and so I just hit her and I went into shock after I hit her you know cause I was scared after that even

though I should help her you know and say I'm sorry or continue what I was doing.

Beck: What did you do?

Victor: And then I just kept on hitting her.

Beck: Where did this start at Victor?

Victor: Right in front of my house.

Beck: Right behind your house or in front of your house?

Victor: Well my house right here and it happened right here, no it happened right here.

Beck: In the cul de sac?

Victor: Yeah, you know where that there's an empty lot over there.

Beck: And what happened then.

Victor: And then I kept hitting her and stuff and I got scared and I left and I went home and went in my room and I was just shaking cause.

[18] Beck: How did she get into the field Victor?

Victor: I brought her there, I didn't bring there but that's where it happened, happened right in front of the field.

Beck: It happened right in front of the field?

Victor: Yeah then I was scared and I didn't know what to do so I brought her I dragged her in there.

Beck: You dragged her?

Victor: Not really dragged her she was up she kinda walked with me and then.

Beck: What did you do, did you put her in a head lock or carry her or something or?

Victor: No I just grabbed her by the arm.

Beck: Just grabbed her by the arm and dragged her in there.

Victor: And then I just kept punching her and I was just getting scared cause you know I never done that before then I went home and mom said why did you take so long. Cause I told her I was just going for a walk and lied to her I told her I went to McDonald's down the street and then I came home I mean I was already home and then I was just thinking about it and I was scared. And then that night I went out.

Beck: You went back out? What time?

Victor: No I went to that girls house

Beck: That's when you went with Christin and Tina?

Victor: Yeah and I told them about it.

Beck: This happened about 7 o'clock that night?

Victor: Yeah, it did, 6:30-7.

Beck: You told Christin and Tina about?

[19] Victor: Yes, and um I was scared cause I didn't know what to do and I told em I did that and I, I wanted them to help, I wanted them to you know, go over there tell them they found it and they're like no I'm not in it you know so then the next day I wanted to go to check to see if she was there and she was still breathing so I asked her I said this is the same person, do you want help and then um

she wouldn't answer me but she was breathing.

Beck: Uhm-uhm

Victor: And I said um, I just kept saying do you want help and then I, I, I just said, you know I said one time I said you want me to call the ambulance and she didn't answer and then thats when I really got scared I I then I just went home.

Beck: Victor what did you hit her with?

Victor: What did I hit her with?

Beck: Yeah.

Victor: My um um that cassette thing?

Beck: You hit her with the walkman?

Victor: ummm

Beck: What else did you hit her with?

Victor: I had a fake gun.

Beck: You had a fake gun? What kind of gun?

Victor: It was a water gun.

Beck: Like a little plastic water gun?

Victor: Yeah, it was black.

Beck: Yeah, did you kick her?

Victor: Yeah.

Beck: Where did you kick her at?

Victor: In the face.

Beck: In the face, you, alright man.

[20]Victor: Me,

Beck: Yeah you okay? Its better to get it all out now.

Victor: Am I gonna be in life prison?

Beck: I don't know man, Okay, but like I said we already know you did it.

Victor: I know.

Beck: It just . . .

Victor: When I was lying to ya I felt weird even more scared.

Beck: Now its gonna be a matter of just you know just cleansing the soul okay, cleansing the soul, so you were out walking Friday night and she said something to ya, what did she do, did she start with ya or?

Victor: Not really start with me, I mean she's an old lady you know, but she was just mouthing and I was just, I got into an arguement with my mom and felt like I'm getting away from my mom for awhile and here I come and I'm arguing again with, so I just got mad, and I was really mad and I just went up to her, and I told her I was going to hit her I said you know I said just get away from her I said don't even start with me I'm gonna hit ya, I said like I'll beat the shit out of ya, and she said oh or something like that so I just punched her.

Beck: Where did you hit her the first time?

Victor: Right here

Beck: Was that with your hand? or with the walk-man

Victor: (makes unintelligible sounds)

Beck: With your hand, your right hand? Did she fall down?

Victor: No she just held her face

Beck: She just held her face, what did she say to you?

Victor: She looked at me and she said I never thought you were going to be this kind of a person.

Beck: Yeah and then what happened?

Victor: Then I just kept on hitting her . . .

[21] Beck: You just kept on hitting her? When did you bring her into the field?

Victor: Well after I hit her then.

Beck: Okay you kinda lost me you said you were right by your house.

Victor: My house is right here then there is a hill then the field is right here.

Beck: Right.

Victor: That's where it happened.

Beck: It happened up on top of that hill or

Victor: Not on top, right in front of it.

Beck: Right in front of the hill, so its on, what road is that, Woodrich or

Victor: Del Rio?

Beck: Whats the name of the complex back there?

Victor: Heatherwood.

Beck: That's Heatherwood, Heatherwood, is that the same road that Manatee Elementary School is on?

Victor: Yeah, yeah

Beck: So its right there at the, by Cashmere and Heatherwood?

Victor: uhm-uhm

Beck: So it happened right there in the street?

Victor: uhm-uhm

Beck: And that's where you hit her the first time?

Victor: –

Beck: Yeah?

Victor: uhm-uhm

Beck: Okay, and after you hit her the first time what happened?

[22] Victor: Then she told me it hurt,

Beck: Did you, is that when you brought her back over the hill?

Victor: Yeah that's when I got scared.

Beck: So you just grabbed her and dragged her back over the hill?

Victor: (unintelligible) I just said come with me. You know. I guess she though I was going to help her or something and she followed me. She kinda like walked, then I was just, she was being nice, and I didn't want to you know (unintelligible) I was just scared I went into shock, I kinda didn't know what I was doing anymore, I just hit her.

Beck: Okay, you were hitting her with the walkman?

Victor: Yeah.

Beck: And you were hitting her with your hands, and you were kicking her? What kind of clothes were you wearing? Do you remember?

Victor: (unintelligible) Yeah I remember.

Beck: What kind of clothes were you wearing?

Victor: I was wearing, I wasn't wearing a shirt I was just wearing shorts and shoes,

Beck: What color shorts?

Victor: Blue.

Beck: Where are they now?

Victor: They're at my house.

Beck: Are they in the hamper? or are they in a drawer?

Victor: They're probably still in my room.

Beck: They're probably still in your room? Did they have blood on them?

Victor: No,

Beck: No,

[23]Victor: They might have had a little bit, cause I was holding her head you know, after everything happened, I was holding you know, cause her eyes were open and little blood got on my hand over here, so I wiped it off, on my shorts.

Beck: Did any blood get on your shoes?

Victor: Yeah

Beck: Yeah. Where are the shoes at now?

Victor: They're at my house.

Beck: Where at?

Victor: At my house.

Beck: In your . . .

Victor: Oh in my room.

Beck: In your bedroom?

Victor: In my room or in the garage.

Beck: In your room or in the garage? Yeah, have you washed the shoes?

Victor: No.

Beck: So the blood's still on them?

Victor: Yeah.

Beck: Feeling pretty bad about this now?

Victor: (Chuckles) yeah (unintelligible) at me for that. I mean I almost was going to confess even before anything was happening you know. Before (unintelligible) but I just didn't know. Cause after, the next day I was like myself again you know I wasn't in, when I went over there and I still seen her there I felt . . .

Beck: How did you feel?

Victor: I felt just like fainting (laughs) umm but as it was happening a car came really fast over there and it came really fast over here and it turned as soon as I seen that I just ran.

Beck: You ran back to your house?

[24] Victor: Yeah.

Beck: Is that after you got done beating her?

Victor: Well that's after I yeah,

Beck: That's after you were done.

Victor: I was just holding her head you know just looking at her I was trying to, talking to her but she wasn't talking

Beck: Was she still breathing then?

Victor: Yeah, she was breathing regular then

Beck: Was she conscious, or was she unconscious?

Victor: She was still conscious.

Beck: She was able to talk to you?

Victor: Yeah,

Beck: What was she saying to you?

Victor: She just I said, well I didn't even say nothing to her I was just holding, looking at her and she just said help.

Beck: She said help?

Victor: So then I was like, you know I was going to go tell my mom you know

Beck: uhm-uhm

Victor: I was just gonna say I just seen her there, then that car just came out of nowhere.

Beck: Kinda of freaked you out or what?

Victor: Yeah cause I was like sitting there then the car just like real fast so I just kinda like

dropped her head and I just left and then I was looking out the window and I thought may be I was pretty soon later I'll be seeing the ambulance there you know. I went back there the next day and she was still there.

Beck: Was she still alive then?

Victor: Yeah

[25] Beck: Was she conscious? or was she unconscious?

Victor: Um. conscious. She was breathing but . . .

Beck: She wasn't able to move or talk or anything like that?

Victor: Na,

Beck: Okay. What time did you go back there that morning?

Victor: Right when I woke up

Beck: Saturday morning. Do you remember what time that was about? So you went back, you got up that morning and you said what time you went back over there?

Victor: Soon as I got up, I walked over there.

Beck: That was about 9 o'clock? And she was still alive then?

Victor: Yeah

Beck: Okay. What did you then?

Victor: I just kinda looked at her for awhile, you know a couple of minutes and then I just kinda shook my head and then I went back to the house cause my mom was outside in the driveway.

Beck: Okay, and what happened then?

Victor: And then . . .

Beck: Did you go someplace or did you stay around the house, or what did you do?

Victor: (mumbles) I stayed around the house.

Beck: You stayed around the house?

Victor: My parents went to work and I stayed around the house.

Beck: Yeah.

Victor: Oh No, no, I went to the pizza shop for a little while

Beck: Yeah

Victor: And then I hung out there for a little while

Beck: Who did you see at the pizza shop?

[26] Victor: Jack

Beck: Who?

Victor: Jack, the delivery kid.

Beck: How did you get there?

Victor: um, my friend, Angel.

Beck: Your friend Angel? He drove you there?

Victor: Yeah I was walking and seen me just walking and he gave me a ride there.

Beck: Did you tell Angel about what happened?

Victor: Yeah.

Beck: You did?

Victor: Yeah

Beck: Did you tell Jack about what happened?

Victor: uhm-uhm

Beck: Who else did you tell about what happened?

Victor: That's all them and the girls.

Beck: Them and Christin and Tina?

Victor: Christin and Tina.

Beck: Christin and Tina. So you went to the pizza shop

Victor: And I just hung out there for awhile and then me and Jack want to the discount auto parts to buy some parts for my car.

Beck: Yeah.

Victor: And then we came home, well he dropped me off home after that.

Beck: Okay, about what time was that do you remember?

Victor: I know it was before 4, cause he had to go to work at my dad's at 4.

[28]* Beck: Okay. What color was the spray paint?

Victor: Red

Beck: Red spray paint, where did you get it from?

Victor: From my house

Beck: Where in your house?

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* [Transcript in record is either missing page 27 or is misnumbered from this point on.]

Victor: Well I had that spray paint from a long time ago cause when I had a go cart, I spray painted it red.

Beck: uhm-uhm, where is the spray paint can now?

Victor: I threw it out.

Beck: You threw it out? In the garbage or where did you throw it?

Victor: I threw it in the garbage yeah,

Beck: Has the garbage been picked up at your house yet?

Victor: Unintelligible

Beck: When does it get picked up?

Victor: Not yesterday, Saturday.

Beck: Was it late Saturday?

Victor: Yeah, the garbage truck comes about 4, 4 or 5

Beck: So you think they've already picked up the spray paint can?

Victor: Maybe yeah

Beck: Or you think it may still be in your garbage can?

Victor: (mumbles) it won't hurt if we check.

Beck: Okay (unintelligible) So you went back over there and you tried to catch her on fire, where did you light her at?

Victor: I didn't light her, I lit the newspaper and the newspaper caught onto her shorts.

Beck: Okay, what did you use to light the newspaper with?

[29] Victor: Matches

Beck: A pack of matches? Did you leave the matches behind or did you take them with ya?

Victor: I, I dropped them so I guess there [sic] behind.

Beck: You dropped them? Okay, and when she didn't catch on fire what did you do?

Victor: I'd say I just left her as she was

Beck: Okay, did you bring the spray paint with you when you brought the newspaper.

Victor: I never even thought of that, no

Beck: So you go back over there Saturday, you see her there you try to catch her you try to light her on fire, but she doesn't light, did you go back home and get the spray paint?

Victor: uhm-uhm

Beck: You went back

Victor: Not like right away just couple hours after.

Beck: A couple hours after, yeah and then you went back and spray painted her? Why did you do that?

Victor: Remove the fingerprints?

Beck: You thought it would destroy the fingerprints? What did you do after that?

Victor: After the fingerprints?

Beck: No after you spray painted her?

Victor: Went home and cried.

Beck: You went home and cried? Yeah. You felt bad about all this?

Victor: That and I felt like something was wrong, cause I never thought I was gonna be like this, you know, I thought definitely something had to be wrong cause I'm a friendly person I never, I never thought about killing anybody, you know, I never thought this would happen. I just went home and cried for a little while.

[30] Beck: Did you go out Saturday night?

Victor: No.

Beck: Okay well you went to your to your [sic] AA meeting.

Victor: Yeah well I went to the AA meeting, but I wouldn't call that out

Beck: Did you go back up to the Pizzeria that night?

Victor: Yeah,

Beck: Who did you see there?

Victor: (sighs) well I saw alot of people there. (laughs)

Beck: Yeah, who did you talk to?

Victor: All the workers,

Beck: Who did you talk to?

Victor: I talked to the waitress's husband.

Beck: Did you tell him what had happened?

Victor: No, I don't even know, I just met him last Saturday.

Beck: Did you talk to who, was the guy?

Victor: Jack?

Beck: Jack

Victor: Just a little bit, cause he was delivering

Beck: Did you talk to anybody else?

Victor: The waitress (laughs)

Beck: When you guys went to Discount Auto Parts, who was the girl that was with ya?

Victor: um, Jack's girlfriend.

Beck: Jack's girlfriend? What's her name?

Victor: Lynette I believe

Beck: Lynette, did you tell Lynette what had happened?

[31] Victor: Jack might have I didn't

Beck: You didn't?

Victor: I didn't tell her.

Beck: There was a car that was seen back there Saturday afternoon whose car was that?

Victor: Oh that was Jack's car, cause he didn't believe me cause I was depressed and I was telling him about and he said na I don't believe you, I don't believe you, and I said Jack you know I could take you to see the thing you know it really happened and he said na please tell you're joking. I said no

Jack for real we were right there I was like well you want to go over here and look? And then he went over there but there was telephone people working and then he didn't see nothing but like just a little bit of the leg sticking out.

Beck: Was Lynette with you then?

Victor: Yes,

Beck: Did she see the body also?

Victor: Yeah

Beck: Did Jack help you murder this woman?

Victor: Na Jack did not at all it was all by myself.

Beck: Did Jack assist you in any way? In doing this?

Victor: No Jack had nothing to do with it all it was just me by myself.

Beck: But Jack knew about it Saturday.

Victor: Cause I told him.

Beck: Okay, so you go back, you take Jack back there, is that before he dropped you off at your house?

Victor: No that was before we went to Discount Auto Parts.

Beck: That was before you went to Discount Auto Parts? Did you go back there after you came back from Discount Auto Parts?

Victor: um no,

[32] Beck: No

Victor: I went back there.

Beck: No did Jack and Lynette.

Victor: No

Beck: Did you ever bring anybody else back there to show the body?

Victor: Nope

Beck: No, when, so you spray painted the body, you went home and you cried, and then you went back up to the Pizzeria, right?

Victor: uhm-uhm

Beck: And then you had your AA meeting?

Victor: Yeah

Beck: And that was from 7:30 to 8:30? That was from 7:30 to 8:30?

Victor: Yeah

Beck: What did you do after the AA Meeting?

Victor: I went to my dad's pizza place.

Beck: Out at Roma West again?

Victor: Yeah.

Beck: And what happened then?

Victor: And then we stayed there and I helped him out a little bit and then closed and then my aunt and uncle came to my house, we just hung out there and fell asleep soon as I got home.

Beck: Okay, did you ever go back over to see the body again?

Victor: No, never

Beck: Did you go back over Sunday to see the body? No, Victor did you ever see this old lady before? Did you know who this old lady was?

[33] Victor: No, I know who her husband was, just because I used to cut his grass

Beck: Who was her husband?

Victor: I don't know his name but I think, I don't cut his grass I think it's him, I don't know, I just seen this old man all the time walking so I guess he was looking for her you know.

Beck: Okay, did you ever meet the old lady before this happened.

Victor: (mumbles) no

Beck: You have no idea who she was?

Victor: Nope

Beck: Do you have any idea where she lived?

Victor: Nope

Beck: You have no idea where she lived?

Victor: No

Beck: Did you ever see her walking in the neighborhood or anything before this?

Victor: No this was the first time. Cause I usually don't go walking I just started walking.

Beck: You have no idea where this woman lived?

Victor: No, none at all.

Beck: Okay and this was the first time you'd ever seen her?

Victor: uhm-uhm

Beck: And then this happened? Have you noticed anybody out looking around the neighborhoods? Yeah, what are they looking for?

Victor: (coughs) What were they looking for?

Beck: Yeah, do you think they're looking for her?

Victor: I know they were looking for her.

[34] Beck: How do you know that?

Victor: Cause before me and this old lady and I got into this kind of arguement she was over here and I was walking and she was talking to some other old lady.

Beck: Okay,

Victor: And the other old lady was walking this way,

Beck: Okay,

Victor: And then I was walking this way and that's when and we were walking more up and I was walking and then that's where it happened.

Beck: Okay were you walking behind her you mean?

Victor: Yeah I was walking over here and she was walking over her [sic] and I was just like rapping and then that's when she told me to be quiet and all and I had a filthy mouth, she said and then the next day that old lady that was talking to her or a couple days after that old lady that was talking to her and a man was looking for her.

Beck: They were out looking for her?

Victor: I guess was (unintelligible) they were didn't look like

Beck: Do you know which way she walked from? Where she was walking from? Or did she look like she was walking back towards St. Lucie West or was she going

Victor: We were in St. Lucie West

Beck: Yeah you were right there on the corner, Cashmere and the

Victor: No not by Cashmere

Beck: You were down farther down back where the body was?

Victor: Yeah we were down where it happened

Beck: Almost right behind your house then?

Victor: Right on the side. It happened.

Beck: Okay, was she walking like she was walking towards Cashmere or was she walking up towards your house or towards

[35] Victor: Cashmere

Beck: She was walking toward Cashmere? Okay so you don't know whether she lived in St. Lucie West or not?

Victor: I don't know.

Beck: Okay

Victor: I mean I'm sure she did cause she was walking in there.

Beck: Can you tell me what this lady looked like?

Victor: uhm-uhm

Beck: What did she look like Victor?

Victor: She had white hair.

Beck: She had white hair, how old do you think she was?

Victor: She looked about in her late 70's

Beck: Late 70's? How big was she?

Victor: Like this size?

Beck: Yeah like about how tall? How tall are you?

Victor: I'm about 5'6' or 5'7'.

Beck: 5'6' 5'7' was she very much shorter than you.

Victor: She was a little taller than me.

Beck: She was a little taller than you?

Victor: Just like a little bit.

Beck: Yeah, was she fat or was she thin?

Victor: She wasn't really fat but she was kinda

Beck: Kinda chunky?

Victor: Yeah like down here.

Beck: Do you remember what kind of clothes she was wearing?

Victor: Yeah (laughs)

[36] Beck: What was she wearing?

Victor: um white shorts, and um red and white striped shirt.

Beck: A red and white stiped [sic] shirt, and you have no idea who this lady is or where she came from?

Victor: I don't know her, at all

Beck: That was the very first time you had ever seen her or ever had any contact with her.

Victor: Right

Beck: Never had any arguements [sic] with her before?

Victor: Na

Beck: Victor has anything like this ever happened to you before?

Victor: Nope. (laughs)

Beck: No

Victor: No (laughs)

Beck: No

Victor: I had bad dreams like this before.

Beck: Like you felt like you were going [sic] hurt somebody?

Victor: No I had a dream that I did hurt somebody

Beck: Who did you hurt in your dream?

Victor: My brother.

Beck: Your brother, Albert? Yeah, do you and Albert fight alot?

Victor: We don't anymore since I been out of the Savannah's, but before that there were times where I called the Police on him.

Beck: Yeah I know.

Victor: Cause I was scared of him.

Beck: How about your dad?

[37] Victor: How do me and my dad get along?

Beck: Yeah

Victor: Pretty good, I mean

Beck: Are you guys still fighting alot?

Victor: No not that much,

Beck: No

Victor: You might be getting me mixed up with my brother cause my brother used to fight like

Beck: Maybe I am getting you mixed up with your brother

Victor: Cause the cops had come to my house few times cause my brother and my father got into a fight.

Beck: Maybe that's what I'm thinking about, maybe that's what I'm thinking about. Now Vic did anything else happen? What else do I need to know about this?

Victor: (unintelligible)

Beck: Did she hurt you any way? Did she scratch you? Did she fight you at all?

Victor: A little she stratched [sic] me over there,

Beck: Where did she stratch [sic] you?

Victor: (unintelligible) you want to see it?

Beck: Yeah please.

Victor: I don't know if its still there.

Beck: Yeah it's still there. That's where she stratched [sic] ya?

Victor: Yeah where ever it is.

Beck: She stratched [sic] you pretty good too huh? Was it bleeding?

Victor: A little bit

Beck: (Sighs) Yeah

Victor: I guess it was cause my shirt.

[38] Beck: Did she hurt you any place else?

Victor: Nope

Beck: That's all.

Victor: She slapped me one time.

Beck: Where did she slap ya?

Victor: In the face.

Beck: Was that before or after you hit her?

Victor: After.

Beck: It was after you hit her? Yeah, Victor what else happened? Did you do anything sexually to this woman?

Victor: No (laughs)

Beck: No

Victor: No

Beck: Okay, you say that absolutely, positively not,

Victor: No (laughs)

Beck: Just didn't happen right?

Victor: No

Beck: Okay, I believe you, you're doing the right thing man,

Victor: The truth is the best I'd rather you know

Beck: Yeah

Victor: I think I need some help.

Beck: I think you need some help too.

Victor: I mean cause what I had help at the Savannah's it was alright but I just get I don't know I just get weird feelings sometimes

Beck: Yeah, like what?

Victor: I don't know if its the medication or that I'm taking or its just I don't feel myself sometimes.

[39] Beck: Yeah.

Victor: Sometimes I look at myself and I just like (laughs)

Beck: Don't even feel like it's you?

Victor: Yeah it's like I don't know I just I just need help

Beck: Victor how old are you?

Victor: 16

Beck: Your birthday is February 27th. Do you know your social security number.

Victor: No

Beck: Do you have social security number?

Victor: Yeah

Beck: But you just don't know it?

Victor: No I don't know it by heart.

Beck: What's your home phone number?

Victor: 878-3631

Beck: 878-3631, does your mom and dad know anything about this?

Victor: No

Beck: No you haven't said nothing to them? How about Albert?

Victor: No he's away.

Beck: Where's Albert at?

Victor: He's in South Carolina with his girlfriend on vacation.

Beck: Dad's name is Eugene?

Victor: uhm-uhm

Beck: Victor is there anything else I need to know about what happened.

Victor: No that's about it

Beck: Is that about all of it? That's okay

[40] Beck: Victor, how long were you in the Savannah's for?

Victor: Four or five weeks

Beck: Four or five weeks,

Victor: Yeah

Beck: When did you get out?

Victor: I don't remember a date.

Beck: Do you remember when you went in?

Victor: No (laughs) it was I didn't know I was going to stay there they Baker Acted me, Baker Acted me

Beck: Baker Acted You?

Victor: Yeah Baker Acted me

Beck: When, how long ago did you get out? Was it a month ago, or two months ago or three months ago?

Victor: Maybe two months ago I know its not more than three months maybe.

Beck: Not more than three months.

Victor: Nah

Beck: Victor when this was happening did you know what you [sic] doing was wrong?

Victor: While I was doing it I didn't know, I really like I said I went into shock you know. I wasn't think [sic] nothing my mind went clear. There was a few times I tell my mom that I'm scared cause when I get mad my mind just goes blank.

Beck: uhm-uhm

Victor: And I told her that a few times and she just didn't believe me. You know.

Beck: How about the next day when you went out there and she was still breathing.

Victor: Yeah that's when I really felt bad.

Beck: You knew you [sic] that you did

[41] Victor: I knew that I did something wrong, that's why, I knew soon as I seen her I had tears in my eyes and I said you need help, cause she wasn't talking to me and I didn't, I was confused I didn't know whether I should tell somebody or just let her stay there, I was just, I didn't know where to start.

Beck: (sighs) Okay, Detective Reuther do you have anything you would like to clarify or ask?

Tom: Just one thing about cutting lawns, you mentioned something about cutting lawns with somebody? Who did you cut the lawns with?

Victor: Richards

Reuther: Na I mean as far as you said something about before about cutting the lawn for her husband?

Victor: I think it was cause I seen this guy that was walking with the old lady that, I didn't cut the lawn for them I cut their next door neighbors.

Beck: Where was the next door neighbors at which house was that?

Victor: I don't know the street but its right across the street from mine.

Beck: Right across the street.

Victor: I think that's her husband cause she was walking with this old lady, and her husband yelled at me.

Beck: Okay, now which old lady are we talking about, are we talking about the one that was in the field or we talking about . . .

Victor: Yeah

Beck: the lady she was walking with?

Victor: The one she was

Beck: So you think, so do you think the old man is her husband?

Victor: I think cause he was walking with that old lady

Beck: He was walking with the same old lady?

Victor: Yeah and

[42] Beck: Was that the same day that you saw her?

Victor: Saw her, na, na, na, na

Beck: That you had the fight with?

Victor: Well yeah I seen em that same day they were looking, um, no I did see em that day, cause soon as I went home I went out.

Beck: Okay

Victor: The next day I seen em

Beck: Okay you the old man that you are talking about you think he's the old lady's in the field husband?

Victor: Either that or he is the other ones.

Beck: Either that or he's the other old lady's husband, the old lady she was talking to right before you guys got in a fight.

Victor: uhm-uhm

Beck: Right? and you used to cut their next door neighbor's yard?

Victor: Yeah if it's the same one yeah and then that old man yelled at me.

Beck: Do you think it's the same one?

Victor: Probably

Beck: Look like the same guy? or you don't know you're just guessing.

Victor: I know it's the same guy that yelled at me, but I don't know if it's his . . .

Beck: Do you know where he lives?

Victor: Not by heart if you bring me in the neighborhood I can pick out his house.

Beck: You can show me which house it is? We might try to do that okay. Did this lady tell you what name was at all? The lady that you hit.

Victor: I don't know.

[43] Beck: You have no idea huh

Victor: I told her what my name was

Beck: Did ya? When did you tell her that?

Victor: When she was yelling [sic] me when she was calling me a low class and um um she said something to me and I said that's not name, my name is Victor, and then just kept telling me how I shouldn't curse and all that and I kept telling her to shut up and she kept lecturing me about and that's when I just got tired and I just hit her.

Beck: She kept lecturing you?

Victor: uhm-uhm

Beck: Calling you low class?

Victor: And telling me what kind of music I need to listen to

Beck: Didn't want you to listen to Gang Saw huh?

Victor: Excuse me.

Beck: Didn't want you to listen to Gang Saw?

Victor: Gang Saw?

Beck: Isn't that the rapper?

Victor: Na I was listening to Doctor Dre.

Beck: You say when your mind goes blank and you don't feel anything, do you know what you're doing do you know what's right and what's wrong?

Victor: Sometimes, it all depends on how like lets say that I get in a real arguement [sic] with my parents, that's when it really happens and it takes me a few minutes sometimes it takes me a half and hour to make that make me understand.

Beck: Saturday when you went back out and you saw her and she was still breathing you knew, you knew the difference between right and wrong then?

Victor: Yeah

Beck: Okay, what would have been the right thing to do?

[44] Victor: Tell somebody right away

Beck: And try to get her help? Okay, when you spray painted her did you know that what you were doing was wrong?

Victor: Kinda yeah a little bit of both

Beck: Yeah, so when you were spray painting her did you know did you feel like that was the right thing to do or that was the wrong thing to do?

Victor: Well I knew it was wrong when I was doing it.

Beck: You were doing it because it was something that might help ya then?

Victor: Yeah I thought it was you know it was just

Beck: (sighs) so if we take a ride back out to your neighborhood you might be able to show me where this elderly gentlemen lives?

Victor: Yeah probably

Beck: Okay, do you remember the name of the persons yard that you used to cut?

Victor: Na I don't know anything I just cut

Beck: How long ago was that?

Victor: Well I have a different job now landscaping, we don't cut their lawn now I used to work with this other guy, they just

Beck: Oh it's with a company that you used to cut this other persons yard?

Victor: Yeah

Beck: Okay,

Victor: And um um we used to just do lawns in St. Lucie West and then

Beck: Which street would this be on? Would this be on? Would it be on, you live on Moonlite

Victor: I live on Moonlite, Moonlite you go this way

Beck: Right would it be on Starlight?

[45] Victor: And then you go straight and then it's the first right we cut lawns in there

Beck: Would that be Cedar Cove?

Victor: I don't know the name. It might be Cedar Cove, I don't know.

Beck: I don't know (sighs)

Reuther: The first right I think is Starlight isn't it?

Victor: It might be

Beck: I think it is yeah, it's either Starlight or Cedar Cove.

Reuther: How many houses from the corner is it?

Victor: I don't know

Reuther: Okay that's it

Beck: Victor I'm proud of you, you did the right thing

Victor: I just

Beck: The truth and when the truth comes out we always

Victor: I don't want [sic] get in trouble man.

Beck: You did the right thing.

Victor: I just don't, I know I need help cause I felt bad but I don't want to waste my life now you know

Beck: Yeah I know. Victor before I came in here did anybody threaten you, or make any promises to you if you didn't talk to me?

Victor: Oh no

Beck: Did I at any time make any threats to you or make you any promises

Victor: No

Beck: For you to talk to me

Victor: No

[46] Beck: Okay, and the statement was on your own free will it was just to get it off your chest? Yeah.

Victor: Yes

Beck: Okay

Victor: Even though I did something wrong I kinda still feel better that I told somebody now

Beck: Yeah

Victor: I don't have to worry about going out of my house people watching me now.

Beck: (Sighs)You understand you are going to be arrested for this? Yeah?

Victor: Yes.

Beck: Do you understand that?

Victor: Yes.

Beck: Okay. Alright anybody else have any further questions?

Reuther, Kugler: No

Beck: Victor do you have any questions for me?

Victor: No, is my mom gonna be notified

Beck: I'm gonna call your mom right now, yeah okay

Victor: How you gonna bring it out to her I mean you just going to be like your son murdered somebody

Beck: Well I'm going to try to break it as easy as I can, okay

Victor: I have a feeling that see my mom, I don't know she's a nervous woman

Beck: You think she is going to have problems?

Victor: She might pass away.

Beck: Why?

Victor: I don't know (laughs) She gets sick easy

Beck: You just afraid of that or what?

[47] Victor: yeah (mumbling)

Beck: Okay, well we will try to be as gentle as we can

Victor: Why don't you tell my dad first

Beck: We'll try to do that, okay? Where is your dad at now?

Victor: He's at work, oh no don't tell my dad first tell my mom cause he's working

Beck: I'll try to tell your mom first and try to be as gentle as we can

Victor: Cause my dad's working he'll drop that big load on him now

Beck: You said you were 5'6" 5'7"?

Victor: Yeah

Beck: How much do you weigh?

Victor:	123
Beck:	123, I'm gonna call it 125, alright?
Victor:	Alright
Beck:	Black hair
Victor:	Yeah
Beck:	Do you have any other scars beside the one on your left hand?
Victor:	No
Beck:	Just the ones on your left hand? Victor do you have any other questions anything you would like to ask me now?
Victor:	um no
Beck:	We're gonna go ahead, we're gonna go ahead
Reuther:	(unintelligible)
Beck:	He's got left hand scars, from cigarettes
Reuther:	Yeah which one did he use to hit the woman which hand?
[48] Beck:	I think he said the right hand, didn't you?
Victor:	Yeah I used my right hand.
Reuther:	Okay
Beck:	Okay, (sighs) the napkin that we found out in the field with the red spray paint on it, did you bring that out there?
Victor:	No she pulled that out of her pocket.
Beck:	When did she pull that out of her pocket?
Victor:	After I punched her the first time, soon as I punched her she started bleeding

Beck: And she pulled it out to wipe the blood off?

Victor: Yeah she even gave it to me to wipe it off my hand but I told her I didn't want it.

Beck: Really

Victor: That's when I kinda started feeling real bad cause she was like being nice.

Beck: Yeah

Reuther: Glasses

Beck: Was she wearing glasses?

Victor: Yeah

Beck: She was?

Victor: She was wearing a hearing aid too.

Beck: She was wearing a hearing aid too

Victor: Both

Beck: In both ears?

Victor: They were, I seen the glasses, I seen the hearing, one hearing aid was still in her ear, the other one was on the floor I seen it

Beck: Okay

[49] Victor: And the glasses was [sic] right by her.

Beck: Okay

Beck: So you punched her above the right eye the first time? She took the napkin out and started wiping the blood off her head? Yeah? And she asked you if you wanted it? So you could wipe the blood off you? You felt bad then?

Victor: Yeah (mumbling)

Beck: So what you did was knew what you did was wrong?

Victor: Yeah. Right then I knew.

Beck: It was just too late huh? Was already done?

Victor: Yeah

Beck: Okay. When it was already done did you feel like that you in order for you to stay out of trouble you had to kill her?

Victor: Na

Beck: What were you trying to do?

Victor: Oh when it was happening?

Beck: After you already hit her?

Victor: Oh yeah

Beck: By that time you knew that

Victor: Not kill her but I felt like that I had to hurt her pretty bad I mean

Beck: Why

Victor: For her not to remember me,

Beck: Not to remember you, is that what you were trying to do?

Victor: Kinda yeah

Beck: Okay, alright, you had enough of this

Victor: Little bit

Beck: Okay this is going to conclude the taped statement of Victor Brancaccio, today's date is still June 14, 1993, time right now is

approximately 11:15 a.m. still present in the room is Victor Brancaccio, myself Detective Scott Beck, Detective Tommy Reuther and Assistant State Attorney Ken Kugler.

IN THE CIRCUIT COURT OF THE
NINETEENTH JUDICIAL CIRCUIT IN AND FOR
INDIAN RIVER COUNTY, FLORIDA

CASE NO. 98-1792

ST. LUCIE COUNTY CASE 93-1592

STATE OF FLORIDA

Plaintiff,

vs.

VICTOR BRANCACCIO,

Defendant.

HEARING ON MOTION TO SUPPRESS

This cause came on for Hearing on Motion to Suppress on December 21, 1998, before the Honorable Paul B. Kanarek, at the Indian River County Courthouse, Vero Beach, Florida.

The appearances were as follows:

FOR THE STATE:

LAWRENCE MIRMAN
Assistant State Attorney
211 South Second Street
Fort Pierce, Florida 34950
and LYNN PARK
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FOR THE DEFENDANT:

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[3] PROCEEDINGS

THE COURT: Good afternoon.

MR. BLACK: Good afternoon, Judge Kanarek.

MR. MIRMAN: Good afternoon.

MS. PARK: Good afternoon.

THE COURT: Okay. All counsel are present including the defendant. There's, I guess, a number of motions set for this afternoon?

MR. BLACK: We have a – may it please the Court, Roy Black on behalf of Victor Brancaccio – we have

a motion to reopen the motion to suppress, your Honor, and we have filed a motion –

THE COURT: Actually, you can just do it from counsel table.

MR. BLACK: Probably be easier.

THE COURT: Yeah. I don't know why it's in my courtroom, I don't know why they do that.

MR. BLACK: We have filed a renewed motion to suppress on grounds that were not previously litigated. In this particular case the previous counsel for Mr. Brancaccio filed a motion to suppress, a hearing was held on that, and that motion was denied. We believe that the Court has jurisdiction to rehear that. We're not asking for it to be reheard on any grounds that have been already decided on. This is a new and independent ground that was not decided in the previous [4] motion. This Court has jurisdiction to hear that because you have jurisdiction over the case and –

THE COURT: Well, how many different, there's a couple of different grounds you're asking.

MR. BLACK: Just one. The only issue is Mr. Brancaccio asked that his parents be notified, the police did not notify his parents as far as we can determine, and under the case law we supplied to the Court, that should require suppression of this statement. That's the sole ground

THE COURT: Based on the statute?

MR. BLACK: Statute and the case law. We have cited to the Court, it's Florida Statute 985.207, Sub 2,

which says that when a child's taken into custody, the person taking the child into custody shall attempt to notify the parent, guardian or legal custodian of the child, the person taking the child into custody shall continue such attempt until the parent is notified. The case law in the state of Florida says, first the Florida Supreme Court said in Door v. State, which is a 1980 Florida Supreme Court case, that the statute does not require suppression of the evidence due to the mere fact of non-notification. So, in other words, if that's not followed, that's not, like, an independent ground. However, the case law says that where the child, the juvenile requests that the parents be notified, or the parents request to be told prior to the interrogation, there must be a suppression. [5] And we've cited a couple of cases to the Court. The main cases are Sublette versus State, which is at 365 –

THE COURT: Well, what's the additional evidence that you want to present?

MR. BLACK: The, we found in one police report by an Officer Theede that Mr. Brancaccio asked that his parents be notified. He said it'll be taken care of and nothing was done. They took a statement from Victor Brancaccio. After the statement they called and notified the parents that he had confessed. So the evidence will show that he made a request, it was not honored, the statement was taken – he did waived his Miranda rights at the beginning of the statement, that's uncontroverted – but our position is that once he made a request for his parents to be notified, everything had to cease until that was done.

THE COURT: But you want to bring in witnesses to testify.

MR. BLACK: Well, we would call Officer Theede, who was the one who was present when Mr. Brancaccio, prior to the taking of the statement, made that request.

THE COURT: All right.

MR. BLACK: And that's what our position is.

THE COURT: Mr. Mirman.

MR. MIRMAN: Your Honor, we do believe that this is the same ground that was previously raised along the lines of it was a finding by the trial judge originally that Mr. [6] Brancaccio's statement, under the totality of circumstances, was a voluntary statement. So the issue of voluntariness was litigated. So we don't agree that this is a new independent ground. What it is is we have a different counsel who's found a different fact to support the argument. We agree that the Court has the discretion to entertain that new evidence, should it want to.

THE COURT: Well, this issue really wasn't argued to Judge Harper?

MR. MIRMAN: Well –

THE COURT: I mean, I read the argument. It didn't seem that that was –

MR. MIRMAN: Well, the argument wasn't made, but the voluntariness issue was litigated.

THE COURT: Okay. I didn't read the evidence at the, at the hearing but I assume from the argument that

the voluntariness had to do with age and mental defect or disease?

MR. MIRMAN: That's correct. Under the totality of the circumstances which, even with regard to parental notification is still, the bottom line, important issue for the Court, the totality of the circumstances, but that fact was not raised by prior counsel. We disagree as far as the state of the evidence and what the evidence would be here today. Our understanding of what occurred was it wasn't a situation where the defendant requested that his parents be notified, but [7] rather inquired as to whether his parents had been notified, because even in his taped statement he was concerned about his parents finding out about the situation; that he did not want his parents to know about it. In fact, at the end of the taped statement he expressed concern to the detective about the effect that this would have on his mother's health, the fact that he was arrested. The law, as I stated, with regard to parental notification simply says that notification of the parents or request by that of the defendant is simply one of the factors to be taken into account under the totality of the circumstances to determine whether the defendant's statement was voluntarily given. Certainly relevant factor, we're not going to say that, I don't think it would be wise for us to take the position that the Court should not entertain their, their hearing at this point, at least for the record for us.

THE COURT: Okay. Are you prepared to proceed?

MR. BLACK: Yes, sir.

THE COURT: Is State –

MR. BLACK: We call –

THE COURT: – State prepared to proceed?

MR. MIRMAN: Yes, sir.

THE COURT: Okay.

MR. BLACK: We call Officer Theede.

(The witness was sworn by the Clerk.)

Whereupon,

[8] MICHAEL SCOTT THEEDE,

called as a witness by the defense, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BLACK:

Q Officer, will you, please, tell us your name.

A Michael Scott Theede.

Q And how are you employed?

A With the City of Port St. Lucie as a police officer.

Q And how long have you been so employed?

A It'll be seven years in February.

Q All right. And were you one of the, or you were the transporting officer for Victor Brancaccio at the time of his arrest; is that correct?

A That is correct.

Q All right. You went, as I understand, you went, and you, after the arrest, at the, near his house and picked him up; is that correct?

A Yes.

Q All right. Now, while you were transporting the defendant, did he ask you why he was being arrested?

A On the way back to the station he did ask why he was under arrest, yes.

Q And what did you tell him?

A Basically I told him I didn't know, that the [9] detectives had just asked me to take him to the station.

Q Okay. You actually did know why he was arrested; correct?

A I knew that he was a suspect and that was a reason why I was transporting him.

Q You knew he was being arrested for first degree murder.

A I wasn't privy at that time to all the specifics of the case. Like I said, I had just come in to work earlier that morning, was working as a float unit, when I heard that he was, or that they were out with him.

Q When you heard that he was going to be arrested; right?

A Like I, at that time, I knew that they had him in custody. I didn't know for sure if he had been arrested or was going in for questioning.

Q Okay. And were you asked to transport him to the station for questioning?

A Yes, I was.

Q All right. And you sat with him for a while prior to the detectives arriving; is that correct?

A Yes.

Q All right.

A Well, initially, when we went upstairs, Detective Ruther was with me. We were waiting for Detective Beck to [10] arrive.

Q Okay. And you sat with him for – what? – about twenty minutes to half an hour; is that correct?

A Somewhere in that neighborhood, yes.

Q And you left the room when Detective Beck arrived.

A That is correct.

Q And Detective Beck was the, the chief investigating officer on this case?

A Yes.

Q Okay. Now, while you were sitting there in the room with Mr. Brancaccio he asked you a number of times why he'd been arrested; isn't that correct?

A I don't know the specific number of times, but he, it did come up more than once, yes.

Q And what did he ask?

A I would have to refer to my supplement that was typed at that time.

Q That's fine.

A There was a conversation that did take place between Detective Ruther and Mr. Brancaccio that took up most of the time that I was there.

Q During that conversation, did he ask why he had been arrested?

A Mr. Brancaccio, according to my report, asked a couple of times why he was there.

[11] Q Okay. Was he told why?

A Not to my knowledge, no.

Q Okay. Now, during that conversation, did he ask to have his parents called?

A No, he did not.

Q Did you write a report about this?

A Yes, I did. He asked, his statement was, he asked if they had been called.

Q All right. What was –

A It was a question.

Q And what kind of response was made to that?

A Detective Ruther's response was that it was being taken care of.

Q What does that mean, it was being taken care of?

A I mean, you would have to ask Detective Ruther what his meaning behind the statement was.

Q Yeah. Well, do you understand that to mean that his parents were being notified of his arrest?

A Like I, to me the fact that it was being taken care of was meant that somebody was informing them, yes.

Q Okay. And that was told to Mr. Brancaccio; correct?

A Yes.

Q In your presence.

A Yes.

Q Did you make any steps to notify Mr. Brancaccio's [12] parents?

A No. It was not my place to.

Q All right. Did you, do you know of anybody else who notified his parents?

A No.

Q Thank you.

MR. BLACK: No further questions, your Honor.

THE COURT: Mr. Mirman.

CROSS-EXAMINATION

BY MR. MIRMAN:

Q Officer Theede, was there a search warrant that was going to be executed around that time?

A To my understanding, yes, there was.

Q And what, what was the nature of the search warrant?

A I believe it was to search the house and looking for evidence of the crime.

Q Search the defendant's house?

A Yes.

Q Okay. Do you know if his parents were at that residence?

A That I do not know.

Q Okay. Did the defendant ever ask you to have his parents present at that time?

A No.

Q Just want to, if you could, detail what your role in [13] the investigation is at this time; where do you fit into the investigation? Were you the lead officer? What were your instructions as far as where the defendant was to be taken and what was going on?

A Basically, my role was just a transport and security officer. I was there to transport the defendant to the station, wait for the detectives who were going to talk with him, basically just to make sure that he was safe while waiting for the detectives.

Q Okay. And who were those detectives?

A Detective Ruther and Detective Beck.

Q And where did you transport the defendant from initially?

A He was stopped by the detectives out on Country Club Drive out in Country Club Estates, so when I arrived he was standing alongside the road, handcuffed,

and at that time I searched him, placed him in my car, and drove him to the station.

Q And you testified originally in the hearing on the motion to suppress in this case; is that right?

A Yes, I believe so.

Q All right. And you detailed the times and the date that this occurred on, these events?

A Yes.

Q All right. And just for the Court's sake, what time [14] and what date are we talking about, as far as when you picked the defendant up and brought him to the station?

A The date would have been 6/14 of 1993. The time that I have on my report is approximately – let's see – the time that I'm showing is around – let's see – I don't have a specific time as to when I went out to the scene.

Q Do you recall approximately?

A I know it was in the morning hours. I don't recall specifically.

Q And how much time had elapsed between the time you picked up the defendant, took him to the sta – and took him to the station?

A I was only out there in St. Lucie West maybe ten minutes before transporting him to the station, which would have taken approximately eight minutes.

Q And how much time did you spend with him at the police station?

A Approximately twenty minutes.

Q At the end of the twenty minutes, where did he go and where did you go?

A He stayed in the room, the interview room. That's when Detective Beck arrived. At that time I left, and that ended my involvement in the case.

Q And the question that he asked you regarding his parents, where did that fit in to this time span?

[15] A Probably, I would say, maybe five minutes, ten minutes before Detective Beck arrived.

Q Did you ever tell Detective Beck about the question that he asked you regarding his parents?

A No, I did not.

Q And why did you not tell Detective Beck about that question?

A Well, at the time, like I said, there was a conversation going on between Detective Ruther and the defendant, and the comment, or the question that was asked, if they had been notified, to me was, it, kind of, flowed along with the conversation and it wasn't any specific point in time, and with Detective Ruther being there when that was asked, like I said, I was there basically as a security officer, so I thought that if it's something that needed to be mentioned it would be mentioned by Detective Ruther.

MR. MIRMAN: Nothing further.

THE COURT: Mr. Black, anything else?

MR. BLACK: Yes.

REDIRECT EXAMINATION

BY MR. BLACK:

Q Just to make clear on this, he had asked if his parents had been called; correct?

A Yes.

Q Okay.

[16] MR. BLACK: Nothing further. Thank you, your Honor.

MR. MIRMAN: No further questions.

THE COURT: You can step down. Thank you.

THE WITNESS: Thank you, your Honor.

THE COURT: Call your next witness.

MR. BLACK: Detective Ruther.

(The witness was sworn by the Clerk.)

Whereupon,

TOM RUTHER,

called as a witness by the defense, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BLACK:

Q Detective, could you please tell us your name.

A Tom Ruther

Q And how are you employed, sir?

A Port St. Lucie Police Department, sergeant.

Q And how long have you been so employed?

A Eleven years.

Q All right. In June of 1993 were you involved in the arrest of Victor Brancaccio?

A Yes, sir.

Q All right. And did you, were you involved, actually, in the arrest out at, near his house?

A Yes, sir.

[17] Q All right. And did you subsequently meet with him at the police station?

A Yes, sir.

Q And who was with you at the time you met with Mr. Brancaccio at the police station?

A Officer Theede.

Q Okay. And, now, did you and Officer Theede have, or did you have a conversation with Mr. Brancaccio prior to Sergeant Beck coming in to do his interrogation?

A Yes, sir.

Q And for approximately how long did you talk to Mr. Brancaccio?

A Approximately thirty minutes.

Q All right. During the conversation that you had with Mr. Brancaccio did he ask if his parents had been called?

A Not that I can recall, sir.

Q You don't recall that?

A No, sir.

Q Did you at any time, did you tell him that it was being taken care of?

A Not that I can recall, sir.

Q Did you ever call his parents and notify them about his arrest?

A No, sir.

Q Did you ever tell Sergeant Beck whether Victor [18] Brancaccio had requested that his parents be notified?

A No, sir.

Q Thank you.

MR. BLACK: No further questions, your Honor.

THE COURT: Mr. Mirman.

CROSS-EXAMINATION

BY MR. MIRMAN:

Q At the time that you were present with Victor Brancaccio before Detective Beck interrogated him –

A Yes, sir.

Q – at the police station, what was going on with regard to a search of his residence?

A While I was waiting with Victor and the officer, Scott Beck was coming back from the courthouse with a search warrant, and we were waiting for Scott to come back, actually, with the search warrant, and then do, to do an interview with Victor.

Q When you say, and then to do an interview with Victor, was Scott Beck going to search the house, or –

A No. Scott was coming back with the search warrant to do the interview, then give it to someone else to do the search warrant.

Q Back when this occurred, what was your position?

A Detective.

Q Detective? And how long had you been a detective at [19] the time?

A Couple of years.

Q Do you recall if the defendant asked you, affirmatively asked you to call his parents?

A No, sir.

Q From your experience, had that occurred, what would have been your reaction, based on your training or the policy of the Port St. Lucie Police Department?

A Well, I would have told Beck, Detective Beck that he requested his parents

Q And why do you say that?

A Because that's just something we do.

Q Is that what you're trained to do, is that what the policy is, or –

A That's what I would have did.

Q How much, what was the time frame between, or how did the two events coincide, the search of the defendant's residence and his interrogation, if you recall?

A As I recall it was parallel to his statement and search.

Q So, at the same time he was giving his statement his house was being searched?

A Yes.

MR. MIRMAN: Nothing further.

THE COURT: Mr. Black, anything else?

[20] MR. BLACK: No.

THE COURT: You can step down. Thank you.

THE WITNESS: Thank you, sir.

THE COURT: Next witness.

MR. BLACK: Sergeant Beck.

(The witness was sworn by the Clerk.)

Whereupon,

SCOTT A. BECK,

called as a witness by the defense, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BLACK:

Q Good afternoon, Sergeant.

A Mr. Black.

Q Will you please tell us your name.

A My name is Scott A. Beck.

Q And how are you employed?

A I'm a sergeant with the Port St. Lucie Police Department, Port St. Lucie, Florida, sir.

Q And how long have you been so employed?

A This February it will be seven years, sir.

Q All right. And were you the lead detective on the investigation involving Victor Brancaccio?

A Yes, sir.

Q All right. And were you present at his arrest in [21] June of 1993?

A I'm not – at the physical arrest, sir, when he was first taken into custody?

Q Yeah, when he was first taken into custody.

A No, sir.

Q All right. But you were notified that he was taken into custody; correct?

A Yes, sir.

Q And did you request that he be taken to the police department for questioning?

A Yes, sir.

Q All right. And you recall how long it was before you began, you know, between his arrest – let me backtrack. How long was it between the time of his arrest and the time you began questioning him at the police department?

A I don't know the exact time, sir. I would say somewhere in the area of about, maybe twenty minutes.

Q All right. Now, in that twenty minutes, were you obtaining a search warrant for his parents' house?

A The search warrant had already been obtained, sir, and I was on my way back, actually, to the police department.

Q With the search warrant?

A Yes, sir.

Q Okay. So, would it be – which started first, the interrogation of Victor or the search of his parents' house?

[22] A I would think probably the interview of Victor, but just shortly prior to the search of the house, sir.

Q Okay. I take it, the search warrant had to be taken out to the house and then executed; correct?

A Yes, sir. Actually the search warrant was taken to the Port St. Lucie Police Department where I gave it to my supervisor, who then responded to the house with a group of detectives.

Q Okay. So when you – let me see if I understand – when you, you got to the police department, you gave someone the warrant to handled; correct?

A That's correct, sir.

Q And then you went upstairs to question Mr. Brancaccio.

A That's correct, sir.

Q And as soon as you went upstairs you went into the interview room and you began questioning him.

A I briefly walked in, introduced myself to Mr. Brancaccio, asked him if he was okay, if he needed anything to drink, et cetera, briefly stepped out of the room, spoke with my lieutenant for just a short period of time, and then went back in and began speaking with Mr. Brancaccio.

Q Okay. Do you remember which lieutenant you spoke to?

A Yes, sir.

[23] Q Who was that?

A Lieutenant Peggy Barcelona.

Q Okay. So Lieutenant Barcelona was at the police department at the time that you were just about to begin the interrogation.

A Yes. Sir.

Q Did Lieutenant Barcelona go to the Brancaccio house to be involved in the search of the house?

A Yes, sir.

Q Okay. So she had to leave the police station at or about the time you began speaking to Mr. Brancaccio.

A Actually we walked out and she was getting on the elevator as I was going into the interview room, yes, sir.

Q Okay. Was she the officer who, or the senior officer in charge of the search of the house?

A I believe so, yes, sir.

Q All right. Now, prior to beginning your interrogation of Mr. Brancaccio, did Officer Theede tell you that Mr. Brancaccio had requested that his parents be notified?

A Not to the best of my recollection, no, sir.

Q Okay. Did Detective Ruther ever tell you that?

A Not to the best of my recollection, no, sir.

Q So you were not made aware of that at all; isn't that correct?

[24] A No, sir.

Q And did you in any way notify Victor's parents that he had been arrested and was about to undergo an interrogation?

A No, sir.

Q Thank you, Sergeant. No further questions.

A You're welcome, sir.

THE COURT: Mr. Mirman.

CROSS-EXAMINATION

BY MR. MIRMAN:

Q Detective Beck, did the defendant himself ever ask you to notify his parents prior to interrogation?

A No, sir.

Q Did the defendant at any point in the interrogation make reference to his parents?

A At the very end of the inves – at the very end of the interview, sir, he asked if we were going to tell his mother about what had happened. He was very concerned about her well-being, about her passing out, or passing away, I believe, is how he put it. He requested that we tell his father about what had happened, and then he changed his mind again, and said, no, I don't you to tell my father while he's at work. You know. Tell my mother, but, you know, kind of, be gentle.

Q Now, the statement that you just made relating to [25] Mr. Brancaccio's statement, was that recorded on the tape recording?

A Yes, sir.

Q And it's part of the record and transcript in this case.

A It certainly should be, yes, sir.

Q Did you have any reason, based on your observations of the defendant, or for any reason whatsoever, to be concerned that he wanted his parents to be notified?

A No, sir. Not in the least.

Q And specifically with reference to the statement – I'm going to read from the statement and ask you if this is what you're referring to – Victor saying, or you asking the defendant, Victor, do you have any questions for me. First of all, that, at the end of your interrogation, where you would be concluding and said do you have any questions for me.

A That was at the latter part of the interview, sir? I don't believe it was at the very end. I think we began talking of something else just after that. But, yes, sir, it was very much in the latter parts of the interview.

Q And his question to you is: No, is my mom going to be notified. And you told him, I'm going to call your mom right now. Okay? And he asked you how are you going to bring it out to her, I mean, you going to be, like, your son murdered somebody. Are these the statements you're making [26] reference to?

A Yes, sir.

MR. BLACK: What page are you on?

MR. MIRMAN: This is page 46.

MR. BLACK: Forty-six.

CROSS-EXAMINATION (Continued)

BY MR. MIRMAN:

Q And you asked him later on at the page, at the bottom, do you think she's going to have problems, and he told you she might pass away, him being concerning about her health.

A He was very concerned about his mother, yes.

MR. MIRMAN: Nothing further.

THE COURT: Mr. Black.

MR. BLACK: Yes, sir.

REDIRECT EXAMINATION

BY MR. BLACK:

Q If Officer Theede had told you that Victor wanted his parents notified, would you have done that?

A At that point in time, sir?

Q yes.

A Probably not.

Q Why not?

A The main reason, sir, was because of the search warrant that was going to be, that was going to be served at [27] the residence, officer safety purposes, as well as destruction of evidence.

Q So you didn't want to alert them?

A Well, certainly that was a concern, sir. You know, any time an officer's going in to serve a search warrant,

you never know the circumstances, even, even with the best of families, you never know the circumstances that the officers are going to arrive upon, so, yeah, that would have been my main concern.

Q Okay. So even if you had been told that he wanted his parents, you still would not have notified them.

A They would have been notified within fifteen or twenty minutes, irregardless, sir, of the search, with the service of the search warrant, so.

Q Well, the service, they would be notified of the service of the search warrant if they were there; correct?

A Yes, sir.

Q Because, obviously you have to read, the search warrant has to be read to them; isn't that correct?

A Yes, sir.

Q And what the search warrant says is that they have, the officers have authority to search the house for evidence; correct?

A That's correct, sir.

Q All right. It doesn't say your son's been arrested [28] and is about to be interrogated; right?

A No, sir.

Q All right. Now, you interviewed a number of other juveniles as witnesses in this case, didn't you?

A Yes, sir.

Q In every one of those instances you notified their parents prior to the interview, didn't you?

A No, sir.

Q You didn't?

A No, sir.

Q And, in fact, with Mr. Zacchio – didn't you even wait for parents to appear, as, before the interrogations?

A I did speak with Mr. Zacchio's parents, yes, sir.

Q And did you agree to wait until they came before you began questioning their son?

A I honestly don't recall, Mr. Black. I don't recall if I waited until Mr. Zacchio arrived at the police department before speaking with, with the younger Mr. Zacchio or not.

Q Okay. So I take it that – did you take a statement from an Angel Pellot, P-E-L-L-O-T?

A Yes, sir, I did take a statement from Mr. Pellot.

Q All right. Pellot. Thank you. And were his parents present for the taking of his statement?

A Were they physically in the interview room? Is that what you're asking?

[29] Q Yes.

A I'd need to refer back to my notes, sir. I'm not sure.

Q Well, let me show you page ten of your report. Maybe this will short circuit having to look through all that.

A Thank you. Yes, sir.

Q And his parents were present during the taking of the statement.

A That's correct, sir.

Q And he was a juvenile; correct?

A I believe so. Yes, sir.

Q Oh. Did you contact the parents of Jack Zacchio and Angel Pellot and ask for permission to speak to them?

A Yes, sir, I believe I did.

Q So you did, at least with the witnesses, contact the parents and ask for permission; is that correct?

A I think it was more of a concern as far as letting them know where they were at, yes, sir, and also ask them if I could speak to their child.

Q Okay. But you didn't do that with Victor Brancaccio.

A No, sir.

Q Because you were afraid that if you alerted the parents they might cause problems for the search of house; correct?

[30] A That was my primary concern, yes, sir.

Q Okay. Now, in the statement – by the way, towards the end told you, Victor even told you that his father was at work and you could contact him there; correct?

A Yes, sir.

Q By the way, did you then contact his father or his mother?

A I did make contact with the officers that were on scene at the search warrant, yes, sir.

Q After the statement had already been taken.

A Yes, sir.

Q All right.

MR. BLACK: No further questions, your Honor.

THE COURT: Mr. Mirman, anything else?

MR. MIRMAN: Nothing further.

THE COURT: You can step down. Thank you, sir.

THE WITNESS: Thank you, your Honor.

MR. BLACK: If your Honor please, we would like to recall Officer Theede.

THE COURT: All right. You're still under oath, sir. You may proceed.

MR. BLACK: Thank you, sir.

Whereupon,

MICHAEL THEEDE,

was recalled as a witness by the defense, having been duly [31] sworn, testified as follows:

REDIRECT EXAMINATION

BY MR. BLACK:

Q Officer Theede, I want to show you what I've marked as Defendant's Exhibit 1 and ask you if that is a copy of your police report.

A Yes, it is.

Q All right. That is a copy of the report that you prepared regarding your transportation and your conversation with mr. Brancaccio; correct?

A Yes, it is.

Q And when did you prepare that report?

A It would have been done within a few days of the incident.

Q Okay. And was your recollection of the incident fresh at the time that you did this report?

A Yes it was.

MR. BLACK: If your Honor please, I'd seek to admit Defendant's Exhibit 1.

THE COURT: Any objection?

MR. MIRMAN: I would object to this extent. I think the document is hearsay. Since this is a court proceeding where the Court is reviewing the facts, I have no problem with the Court looking at it to consider its ruling, but for purposes of the record, I think it would be improper to put it in as [32] substantive evidence. And I don't think it's proper to lay predicate for a business record of a police report. It think that's excluded under the evidence rule.

MR. BLACK: If your Honor please, we want to introduce this not necessarily for the truth of the matter asserted but to show within a couple of days he wrote in his report about Victor's request about notifying his parents to show that his recollection is based upon his report, while Detective Ruther has no report or anything to use to refresh his recollection.

THE COURT: You're not impeaching him with the report?

MR. BLACK: No. We want to show that he first put in writing about Victor's request that his parents be –

THE COURT: You're going to –

MR. BLACK: – notified.

THE COURT: – bolster his testimony by –

MR. BLACK: No. We want to corroborate his testimony.

THE COURT: Corroborate his testimony. Over objection it will be admitted as –

MR. BLACK: Defendant's Exhibit 1 –

THE COURT: Defendant's 1.

MR. BLACK: – your Honor. May I just ask him to read one section of the report.

THE COURT: Sure.

REDIRECT EXAMINATION (Continued)

BY MR. BLACK:

[33] Q If you just read for the Court the par- the second paragraph to the end on page two.

A Mr. Brancaccio asked a couple of times why he was there. Detective Ruther told him we were waiting for someone else to come talk with him. Brancaccio asked if his parents had been called. Detective Ruther said it was being taken care of.

Q All right. Thank you, sir.

MR. BLACK: No further questions, your Honor.

THE COURT: Mr. MIRMAN, anything else?

MR. MIRMAN: No further questions.

* * *

[1393] IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT, IN AND FOR ST. LUCIE COUNTY, FLORIDA

CASE NO.: 98-1592-CF-A

STATE OF FLORIDA,

PLAINTIFF(S),

VOLUME XII

-VS-

VICTOR BRANCACCIO,

DEFENDANT(S).

_____/

TRANSCRIPT OF PROCEEDINGS

This cause came on for trial before the Honorable C. Pfeifer Trowbridge, Circuit Judge, on the 12th day of January, 1999, beginning at the hour of 9:30 o'clock a.m. at the Indian River County Courthouse, Florida.

The appearances at said time and place were as follows:

APPEARANCES:

FOR THE STATE: DIANA LYNN PARK, ASA
2101 15th Avenue
Vero Beach, FL 32960

LAWRENCE MIRMAN, ASA
2101 15th Avenue
Vero Beach, FL 32960

FOR THE DEFENDANT:

ROY BLACK, ESQ.
Black, Srebnick & Kornspan, P.A.
201 S. Biscayne Blvd., Suite 1300
Miami, FL 33131

TIMOTHY SCHULZ, ESQ.
Black, Srebnick & Kornspan, P.A.
201 S. Biscayne Blvd., Suite 1300
Miami, FL 33131

* * *

[1411] DETECTIVE SCOTT BECK,

called as a witness on behalf of the STATE, after having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MIRMAN:

Q Could you state your name for the record, sir?

A Scott A. Beck.

Q And what is your occupation?

A I am a sergeant with the Port St. Lucie Police Department, Port St. Lucie, Florida.

* * *

[1419] Q Can you describe for the jury how you went about advising the defendant of his rights at that time?

A Yes, sir. When I first walked into the room the second time I provided Mr. Brancaccio with a Miranda

card, it's a small laminated card that has the Miranda rights and warnings on them. I asked Mr. Brancaccio to read them, he appeared to read them.

I then explained to him that I want to talk to him and before I could talk to him I needed him to understand his rights as per the law. We then went on the tape, I read the rights to Mr. Brancaccio directly off the rights card at which time he acknowledged that he did understand his rights.

[1420] I then – we obtained a statement form, a rights waiver statement form, that we again provided to Mr. Brancaccio. I again read him all of his rights as I said directly off of that form to which he again acknowledged that he understood his rights and was willing to talk to me.

Q Who else was present at the time you advised the defendant of his rights?

A Detective Ruether and ASA Ken Kugler and Mr. Brancaccio and myself.

Q Can you explain to the jurors who might not be familiar with it what the purpose of having the State Attorney assist in your investigation at that time?

A Any time that we are involved with a major crime scene a State Attorney is called out to assist with the investigation should there be any legal matters such as search and seizure issues, interview issues, just to get them on board immediately for a cooperative effort in the investigation.

Q Did you go about reading the defendant his rights an additional time?

A The one time off the Miranda card and the one time off the statement form plus the one time I allowed him to read them on his own.

Q Let me show what is marked for identification as [1421] State's Exhibit Number 45, do you recognize that exhibit?

A I do.

Q What do you recognize it to be?

A This is the Port St. Lucie Police Department rights waiver form that was drafted on the morning of the 14th with Mr. Brancaccio.

Q Did the defendant understand what he read on that form and did he then sign the form?

A He did. He printed his name one time stating that he had read – that he had read the statement, or had it read to him, and then he signed the statement form or the waiver form.

MR. MIRMAN: At this time the State would offer Exhibit 45 into evidence.

MR. BLACK: No objection.

THE COURT: It will be admitted.

MR. MIRMAN: And I would move to publish it to the jury.

THE COURT: Pass it among them and continue your examination.

BY MR. MIRMAN:

Q Were any promises or threats made to the defendant?

A No, sir.

Q Did the defendant appear to understand his [1422] rights as you read them to him?

A Yes, he did.

Q Did he appear to have any difficulty whatsoever in understanding his rights?

A No, sir, he didn't.

Q Now, to your knowledge are you required by law to notify the defendant's parents prior to interrogation?

A No, sir.

Q What was your understanding of what the law was as far as to notify his parents of his arrest?

A My understanding of the law is once a child is taken into custody that the parents shall be contacted or attempt to be contacted in order to allow them to know where the child is at and the well being of the child.

Q Was that done later on in the day?

A It was done shortly thereafter, yes, sir.

Q Now, during that time what was the status – during the time that you were reading the defendant his rights and so forth what was the status of the search of the defendant's house, what was going on with regard to that?

A When I arrived back at the police department and made contact with Lieutenant Barcelona I provided her with search warrants. She, as well as a team of lieutenants, left the police department en route to the [1423] Brancaccio home to serve the search warrant.

Q During the time that you interviewed the defendant did you have occasion to take an item into evidence?

A I did, sir.

Q And what was that?

A It was a Sony walkman radio.

Q And did he actually have this item with him?

A He did, sir.

Q And did it become of evidentiary value when he advised it had been used in the commission of the crime?

A Yes, sir, it did.

Q Let me show you for identification what has been marked at State's Exhibit Number 46, do you recognize that?

A Yes, sir, I do.

Q What do you recognize that to be?

A That is the Sony walkman radio that was taken on the morning of the 14th from Mr. Brancaccio.

Q Does it appear to be in substantially the same condition as it was on the morning of June 14th, 1993 when you took it into evidence?

A Yes, sir, it does.

MR. MIRMAN: At this time the State would offer Exhibit Number 46 into evidence.

[1424] MR. BLACK: No objection.

THE COURT: It will be admitted.

BY MR. MIRMAN:

Q And during that time did you take a taped statement of the defendant?

A Yes, I did, I took a taped statement of Mr. Brancaccio.

Q Approximately how long was the interview or interrogation of the defendant?

A Almost one hour.

Q Let me show you State's Exhibit Number 47 for identification and ask you if you recognize that?

A Yes, sir, I do.

Q What do you recognize it to be?

A That is the tape, the original tape of the taped statement taken from Mr. Brancaccio on the morning of the 14th.

Q Did you listen to the tape after you conducted the interview and make sure that the tape accurately reflected your conversation with the defendant?

A I did, sir.

Q And did it?

A It did.

MR. MIRMAN: At this time the State would offer Exhibit Number 47 into evidence.

[1425] MR. BLACK: We do have some objection to this, Your Honor.

THE COURT: What are they?

MR. BLACK: Well, do you want me to advise the court now or at sidebar?

THE COURT: Either way if you don't think it should be heard by the jury.

(Whereupon, the following conversation was done outside of the presence of the jury.)

MR. BLACK: I have an objection to it. Number one, the police – he asked that his parents be notified, the officers lied about it. Florida law requires it. Under the circumstances you cannot take the statement. Secondly, they never notified his parents. Third, it is not voluntary. And fourth, it has not proved the corpus delicti as of the offenses as we previously notified the court. And we have issues on this. If the court wishes to hear legal argument we are prepared to make it.

MR. MIRMAN: There were two prior motions to supress hearings and the court has ruled that the tape, the interview is admissable under law.

THE COURT: I will not revisit those rulings. One ruling I made I will adhere to. I will overrule your objection and the exhibit will be admitted.

* * *

[1648] IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT, IN AND FOR ST. LUCIE COUNTY, FLORIDA

CASE NO.: 98-1592-CF-A

STATE OF FLORIDA,

PLAINTIFF(S),

-VS-

VICTOR BRANCACCIO

DEFENDANT(S).

_____/

VOLUME XIV

TRANSCRIPT OF PROCEEDINGS

This cause came on for trial before the Honorable C. Pfeifer Trowbridge, Circuit Judge, on the 13th day of January, 1999, beginning at the hour of 9:30 o'clock a.m, at the Indian River County Courthouse, Florida.

The appearances at said time and place were as follows:

APPEARANCES:

FOR THE STATE: DIANA LYNN PARK, ASA
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Vero Beach, FL 32960

LAWRENCE MIRMAN, ASA
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Vero Beach, FL 32960

FOR THE DEFENDANT: ROY BLACK, ESQ.
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TIMOTHY SCHULZ, ESQ.
Black, Srebnick & Kornspan, P.A.
201 S. Biscayne Blvd.,
Suite 1300
Miami, FL 33131

* * *

[1681] Q Detective Beck, how old was Victor Brancaccio, the defendant in this case, on June 11th of 1993?

A Sixteen years of age, sir.

[1682] Q Drawing your attention to Monday, June 14th of 1993. During the time when you took the statement of the defendant in this case can you describe his demeanor during the time that you interviewed him?

A Very common place, very calm, not agitated, not anything out of the ordinary.

Q Was he able to understand your questions and answer appropriately?

A He answered appropriately, yes, sir. He seemed to understand my questions very easily.

Q Did he seem to be under the influence of any drugs or alcohol at the time?

A No, sir.

Q After you interviewed the defendant what activities did you participate in, what did you do?

A Immediately after the interview with Mr. Brancaccio I had began preparing the arrest affidavits to have him be transported up to the juvenile detention facility. After completing the arrest affidavits I then attended the autopsy of Ms. Frazier.

Q Did you come in contact with the defendant after you interviewed him?

A Yes, numerous times.

Q Did you notice any changes in his behavior?

A No, I did not.

[1683] Q During the statement were there any gestures that he made?

A I am sorry, sir, I am not sure if I understand your question.

Q Did he move his arms or legs, did he show you anything by physical action?

A Just during the course of conversation he would use his hands, he was descriptive with his hands. At one point in time I asked him how he hit Ms. Frazier, he raised his right hand during the course of that.

Q Did he ever cry during the statement?

A No, sir.

Q Did he ever laugh during the statement?

A Yes, sir.

Q At what point did that occur?

A Several points throughout the course of the interview. One time in particular I remember is there was a slight chuckle after I asked him how he felt during the course of this, after the spraypainting, there were some nervous chuckles several times throughout the course of the interview.

Q Now, during the beginning of the interview was there some reference made to FSU, Florida State University?

A Yes, sir.

[1684] Q How did that occur, why did that occur?

A I am a Florida State alumni, I have a keyring or had a keyring from Florida State, it was attached to my handcuff key. When I was undoing Mr. Brancaccio's handcuffs he saw the FSU insignia and asked me if I was an FSU fan.

Q You mentioned him being handcuffed, can you mention whether he was uncuffed?

A When I first arrived in the room he was handcuffed, I believe with his right hand I believe to the bar of the chair he was sitting in, and just to make him more comfortable during the course of the interview I removed the handcuffs.

Q Can you explain the position in the room as far as where you were seated, he was seated, anyone else in the room was seated?

A Yes. The room is approximately maybe eight-feet wide by ten or twelve-feet long. There was a small table approximately eighteen inches wide by approximately thirty-six inches in length, Mr. Brancaccio was seated on one side, I was on one side, Detective Ruether was seated in a corner off to the left and to the side of Mr. Brancaccio, to what would be his right side, and Mr. Kugler was sitting behind me in the opposite corner of Mr. Ruether.

* * *

DISTRICT COURT OF APPEALS
FOURTH DISTRICT

APPEAL NO. 99-1100

CASE NO. 93-1592-CF

> VOLUME 1 OF 3 VOLUMES <

VICTOR BRANCACCIO

Appellant

VS

STATE OF FLORIDA

Appellee

APPEAL FROM THE CIRCUIT COURT
OF ST. LUCIE COUNTY, FLORIDA

SUPPLEMENTAL
RECORD ON APPEAL

ATTORNEY FOR THE APPELLANT:

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[232] THEREUPON,

THOMAS E. UTTLEY, M.D.,

having been first duly sworn, was examined and testified as follows:

THE COURT: Good afternoon, sir, have a seat.

Come on in.

MS. ACOSTA: Excuse me.

THE COURT: Let the record reflect that Miss Acosta is back in the courtroom.

Proceed.

MR. TORRES: Thank you, Your Honor.

BY MR. TORRES:

Q Doctor, please state your full name.

A Thomas Eugene Uttley, U-T-T-L-E-Y.

Q Where do you reside?

A Currently reside in Fort Myers, Florida.

Q What is your business or occupation?

A I'm a medical doctor.

Q In what field, what branch of medicine?

A A number of those. I'm a general psychiatrist, I'm a child psychiatrist, adolescent psychiatrist, child psychologist.

MR. TORRES: I'd move to qualify Dr. Uttley.

[233] MR. MORGAN: Your Honor, we're familiar with his background and we'll stipulate for the purposes of this hearing.

THE COURT: That he's an expert in psychiatry?

MR. MORGAN: Yes, sir.

THE COURT: Okay, proceed.

BY MR. TORRES:

Q Doctor, you had occasion to examine Victor Brancaccio as a result of the Defense requesting you to examine him; is that correct?

A That's correct.

Q And I believe your examination was conducted on or about July 7th, 29th, and August 5th?

A That's correct.

Q Now, you also reviewed the statement that Victor gave to police?

A His confession or statement.

Q The confession, statement, correct.

A That's correct.

Q Which occurred on June 14th, 1993?

A I don't recall the exact date of that.

Q If I show you the date of this statement would that refresh your recollection?

[234] A Yes.

MR. TORRES: May I approach, Your Honor?

THE COURT: Are you referring to a written statement or a transcript of recorded statement?

MR. TORRES: Transcript of a recorded statement.

THE COURT: Well, I just want to clarify that. There's a big difference.

MR. TORRES: Yes, there is.

THE COURT: Show him that.

MR. TORRES: Yes, sir (complies).

BY MR. TORRES:

Q Okay?

A Yes.

Q Now, you also, I believe, were asked by the Court to determine whether he was competent to stand trial?

A That's correct.

Q And whether he was sane or insane at the time of the alleged offense?

A That's correct.

Q Now, based upon your examination, sir, and as the Judge knows I'm going to get right into the meat of this, could you determine based on the [235] psychological tests, psychiatric tests, whether Victor Brancaccio voluntarily and knowingly gave this statement to the police?

A When you say knowingly, do you mean he was competent to give that statement?

Q Correct.

A I do not feel that he was competent to give that statement.

Q Please explain to the Court why not.

A Okay. It's a very – it's a very complex issue. I wish it were as easy as stating this is why. For me to be able to reasonably determine whether somebody's competent to give a statement I have to be able to – and this is all on retrospective study. I obviously wasn't there at the time; neither was any other psychiatric expert. Apparently, it was this person and the police. From reading the report it's insufficient for me to determine his mental state from the report only because it was conducted by non professionals without –

THE COURT: Excuse me, when you say the report, are you talking about the transcript.

THE WITNESS: Transcript, that's correct.

THE COURT: See, report means a legal word [236] to me. Maybe it doesn't mean – you're referring to the transcript when you say report; right?

THE WITNESS: That's correct. What I really was – Okay, I'll try to remember that.

The transcript is insufficient for me as a psychiatrist to determine or reconstruct on a reasonable basis the person's psychological capacities in and of itself.

BY MR. TORRES:

Q What did you use?

A What I needed to use was then a reconstructed psychiatric/psychological status of this person at time he gave this transcript, or at the time of the interview that this transcript came from.

Q Now, did you look at his prior psychiatric and psychological history?

A Yes.

Q Did you use that as a basis, as one of the tools to determine – along with the taped interview or transcript of the taped interview, was that one of the tools that you used?

A You must use as best you can whatever materials are available that would reasonably [237] establish this person's psychological, if you may, mechanical functioning, leading up to, if you have that information available to you, and leading into the particular interview that took place that resulted in this transcript. I have to have that. Anybody has to have that.

Q And can you tell this Court from a reasonable degree of medical certainty whether he, whether Victor voluntarily waived his rights and gave this statement voluntarily?

A Within a reasonable degree of medical certainty his – my opinion regarding his mental functioning leading up to, as a foundation, and into the time of the

interview that resulted in the transcript, was of insufficient capacity to give testament – insufficient capacity to give testimony.

Q And how did you base – how do you base your conclusion, what do you base it on?

A The choices that I have to choose from are sort of, and in layman's terms, there's either a hardware problem, if you may, with this person's mental machinery –

Q Yes, sir?

A – or there isn't.

[238] If there's not an identifiable sort of hardware problem, then we call that in psychiatry or psychology an emotional type problem.

If there is something wrong with his brain, so to speak, there are two types of problems that could cause that, okay, and that's what I would refer to as an organic type impairment or psychiatric problem.

So on the hardware side of the fence I've got to determine if he's got a mechanical type problem with his brain such as an organic or psychiatric type of disturbance, or I have to determine if he's got an emotional problem which is a softwear problem. It's basically the same in layman's terms if a plane crashes and they ask me to investigate what was the cause of the crash, I have to determine was this pilot error, which is like the softwear side of things, or was this a mechanical failure.

In Victor's case, my opinion is that this was a mechanical failure. He had, actually, multiple findings

that would indicate there was hardware-wise something wrong with his mental apparatus.

Q And what is the hardware – what is it [239] that is wrong?

A Specifically?

Q And whether this occurred, was this ongoing on June 14th, 1993?

A Okay, well, that's the whole essence of this whole thing. Obviously, one situation is on one side of the fence and one is on the other. Anybody that's going to make a reasonable declaration of this person's testamentary capacity at the time he made this transcript is going to have to weigh and justify and rectify whatever psychiatric phenomena there are, hardware or softwear.

He has, specifically on the hardware side of the problem, he has an organic disturbance, so to speak. If you reduce it to a brain cell level, your brain cells – I mean it's important to just have some sense of the way this thing works or else organic psychiatric is just hocus pocus, it makes no sense. If you break this down to the machinery of the brain, there's the brain cells and they're very elaborate machines. They run on a variety of chemicals. Those chemicals are ordered up on a whole index card of recipes. That's on the inside of the cells; our genetic material are nothing more [240] than elaborate recipe cards to tell us what we do. So if you damage that – you can damage a cell on the outside where genetically it would be intact at the point of your inception, but something may have come down the pike during your life to injure that brain cell that, well, it very well may not work

right after that. That type of a situation, a psychiatrist, we refer to as an organic problem.

On the order hand, a psychiatric problem is different. That's where you inherit at the point of inception a faulty recipe card, and as your life force goes on and you need to draw upon that card for coding you get this chemical imbalance, and that's what a psychiatric problem is to a psychiatrist.

They're both hardware problems. Any individual is basically not responsible for the control of those. You cannot will them under control, okay.

The thing that is under your voluntary control and that our society holds we need to be responsible for is our emotional functioning, and that's on the other side of the fence, that's the softwear type stuff. That's where there's nothing physically wrong with this brain cell inside or [241] out. Our emotions are the result of all of life's relationship experiences, and if we had a good enough, secure nurturing type life, what not, we know we're going to survive, where our next meal is going to come from. But if you don't have that scenario, over the long haul then you react to that in order to get your necessities met in life, and that's what we call emotionally disturbed people, and this includes the very angry and violent types, and the very depressed types, and the scared and angry types. But this is the other side of the fence.

Obviously, for the purpose of all this, the point here is to determine which side of the fence this kid's thinking capacity was at the time he gave this statement, okay. So then going back to what leads up to that, he had basically three factors under the organic type of impairment, and

one under the psychiatric category of hardware disturbance. So he certainly had at least, in my opinion, four factors on that side.

Specifically, this kid has organic brain dysfunction, damage, whatever, if you may. Damage is sort of a harsh word. That's life long. We see that throughout this kid's record. It's reflected [242] in his learning disabilities at school year after year, things that very well and chronically preceded this event that happened. It's reflected in his school psychology report; it's reflected in the psychologist's report at Savannas Hospital; it's reflected in my finding.

Post respective to this sort of crash situation, in my opinion within medical certainty, certainly there is an organic factor involved here. For example, if you had – if I may, just to use another common way of expressing that, if you had a car engine, it would be the equivalent of having a car engine that didn't work right because the metal was just old and worn out. It was not just that one particular piece wasn't tuned up right or broken, it's just that the whole thing was just worn down and, therefore, weakened by that. It's that type of a global problem. He has that going on.

Secondly, he has on a preceding basis by – and here I have to rely and make some assumptions that the licensed individuals who evaluated him, the psychiatrist at New Horizons and the psychiatrist at Savannas generally are capable of doing the job they are supposed to do. I wasn't there; I have to in this situation rely on their

[243] findings, and they both found this kid to be psychologically, genetically disturbed, chemical imbalance type stuff, and particularly a depressive type dysbalance.

So here if you have an engine then, imagine if you may, the engine's worn out, the rings are smoking and burnt and chipped, and now you've got your carburetor stuck and closed and the idle is too slow, it's depressed and down, it's barely functioning. Okay.

Next, on top of that you have the factor of he was under active – he was under psycho active medication at the time. This directly interacts with the chemical functioning of your brain all over your brain. This, in psychiatric jargon, would come in under an organic condition, an organic factor.

And then the fourth condition is that there was the issue of alcohol on board, and its added effect on top of the worn down engine parts, on top of the choke being stuck too far closed, on top of the Zoloft, would be sort of like putting STP in the engine, and then you've got gosh only knows what factor from the alcohol.

These were conditions that preexisted as best I can gather from the history because I wasn't [244] there; no else was there. You have to rely on that. It's not my – I can't say whether they're competent or not, whether the psychiatrist knew or not, whether the psychologist was competent to make the report. The psychologist said he was organic; I have to make an assumption that the Court checks it out, but I accept it on face value knowing some of these people involved and I understand then these represent preexisting hardware problems. Nobody can control your hardware problems, that's impossible.

Then the additional thing is, I have to understand did they exist but I have to get some sense of did they tick, what's the timing, what provokes them, how long do they last, what's the dynamics involved with these various issues.

I factor all of this type of stuff into my consideration of whether – whether these should have some relevance to the functioning of his engine at the time, his mental machinery functioning at the time he gives this statement that ends up in this report – not report. This transcript.

So looking back on that then, plain and simple, if I'm looking to see why this plane crashed, it doesn't – I have to rectify the fact of this thing was grounded twice. Not only did it just [245] not pass inspection in the hanger, they had this thing grounded twice; he was hospitalized twice, that's how severe that defect was.

And then the medicine was still on board. The alcohol was somewhat of a lesser factor in my mind, but there's already enough without it.

So the burden to me then becomes I have to be able to say why and when all of these type of factors normalized themselves, because this was a relatively short period of time.

The burden then shifts to me to say, well, this kid was just having a pilot error problem, a controllable emotional problem and otherwise had functional mental machinery during the time of his testimony. I have to then be able to account for when did this kid get better in that short

period of time of ten days or a couple of weeks, understanding the way organic – organic factors are permanent, period. They are life long and they will never go away.

Psychiatric factors can wax and wane, they can come and go depending on how much treatment you give them.

Our rule of thumb in psychiatry is when there is a psychiatric breakdown, so to speak, which [246] this kid certainly had because he was hospitalized twice, you know, say within the three or four weeks or so before this event, the rule of thumb in psychiatry is anywhere from six to twelve months of a medication is the rule of thumb. I use nine months over my seven years of practice as an adequate amount of time for a brain to heal itself back up after it breaks. It takes your leg ten weeks in a cast; it takes your brain nine months on a pill before it's healed up. Anything before then is susceptible and fragile to break again.

So, understanding those timings, the organic stuff is permanent. The alcohol is in and out basically as fast as it is metabolized. The Zoloft, after you take it for three or four days it reaches a permanent, continuous, steady state. I assume he took the medication; again, they tell me he did. I can't know that for certain, I have to assume that was true. And that his mental, his psychiatric defect is certainly, at best, going to be marginally stabilized in a couple, three weeks. The timing certainly leads me to conclude that I've got to weigh that very heavily, and I have to have exceptionally crystallized clear information as to whether all that stuff could disappear before I [247]

could say this kid is free and clear of any mechanical problems when he made this statement.

Q And assuming –

THE COURT: Just one moment. The bailiff tells me that your client needs to take a break.

MR. TORRES: Okay.

THE COURT: I don't know, how much longer do you anticipate?

MR. TORRES: Not much longer, just a couple of hypotheticals. That's okay with me, whatever the court's pleasure.

THE COURT: It's your client.

THE BAILIFF: He's sure he can hang on a couple of more minutes.

MR. TORRES: If you're willing to take a break –

THE COURT: We'll recess for five minutes. Is that all right with you?

Don't discuss this until we get back.

(Following a brief recess, the proceedings continued as follows:)

THE COURT: All right, pick up where you left off. And let the record reflect Mr. Brancaccio is back in the courtroom.

[248] MR. TORRES: Yes, Your Honor.

BY MR. TORRES:

Q Now, with the conclusions that you found, can a person hypothetically, if they advised him, for example, Victor, you have the right to remain silent, you understand that, can he say yes, I understand it, and mentally because of that defect, that organic defect or psychiatric defect really not know that he's saying yes and not understand it?

A Absolutely. I mean, his mouth will still run. That may or may not have anything to do with whether it's tied into any type of reality oriented thinking machinery. This is very common in dissociative type states. The closest that might resemble that is if you've ever been around a sleepwalker or sleeptalker, literally they are up and about, and basically if you didn't know they just got out of bed you could probably – and it's just been documented many times over in the psychiatric and psychological literature, you can sit down and have a full scale conversation with them and basically it may be sensical, it may be nonsensical –

Q Can they – I'm sorry.

A Almost always it's of a rather [249] disinhibitive dream type quality to it. Saying things sort of like half drunk and not quite knowing what you're saying. It's like the lights are on but nobody's home type situation. That's very common.

Q Can they respond to questions appropriately, quote, unquote, and still not understand what they really are answering, the question that is being posed to them, or the statement that is being told to them?

A Yes. They can say anything. That's why it's so important to understand if you're out on that playing field to start with, because then basically anything and everything that's said and determined on that playing field isn't worth the paper that it's printed on.

That's like, you know, as an equivalent it's like sitting in session as a reporter talking to Saddam Hussein about the virtues of civility. If you don't know that he's a tyrant, you can very well engage in a full scale conversation with him hours on end, all of which is perfectly worthless had you just known what the playing field arena was to start with.

In my opinion, that is the situation that [250] we're dealing with here. When I was reading through the transcription of this thing it's just – it's nonsensical.

Q Now, hypothetically, by way of hypothetical let's assume these facts to be true: Victor's arrested and handcuffed; taken in a police car to a jail – to a police station, excuse me; placed in an eight by ten, ten by twelve interview room with three officers present and a state attorney present, and they're making him comfortable. Would that be a sort of subtle coercion, knowing his state of mind, based upon your examinations of Victor?

MR. MORGAN: Your Honor, I'm going to object. That's the ultimate issue for the Court to determine. He can ask the Doctor what effect, if any, that might have on somebody in this state of mind, but not whether or not this is coercion.

THE COURT: I'll sustain that.

MR. TORRES: I'll rephrase it, Judge.

THE COURT: All right, rephrase it, leaving out the ultimate issue.

MR. TORRES: I'll leave out that word, Judge.

[251] BY MR. TORRES:

Q You've heard the facts as I've told you. Now, would that affect him in easily answering the police's questions, or the law enforcement officers' questions?

A In my opinion I don't know that it would have – it would have little to no bearing or relevance, one way or the other.

Q Please tell the Judge why.

A The condition that's the problem to start with is not something that is on and off as a result of a minute's worth of sentence, going to the bathroom, a cup of coffee, or something like that. It's just a much bigger thing that is built into and leading up to this whole scenario in the first place. It's not that dynamic, it doesn't hinge or wax or wane on whatever goes on, basically, is my opinion.

So, I don't have any particular thoughts whether they made him comfortable or didn't, or whatever. It's, in my opinion, his whole dysfunction is basically way beyond that in the first place, being responsive to that type of stuff, one way or the other.

Q By way of hypothetical again, what would [252] the effects of someone saying to Victor Brancaccio, this will be better, you know, this is – just to tell the truth, to get it off your chest; would that, again, affect him in a way of responding in a friendly manner to the police and giving a statement?

MR. MORGAN: Your Honor, I'm, going to object unless he narrows it to the time frame we're talking about here, which is the one day and one day only, and that is June 14th.

MR. TORRES: June 14th, this is all June 14th, Judge. That's all we're talking about, with the hypothetical.

THE COURT: With the restriction, do you understand the question, sir?

THE WITNESS: I'm not real clear on what's the question.

THE COURT: I don't think I am either.

BY MR. TORRES:

Q On June 14th he was arrested and taken to the police department, handcuffed to a chair, subsequently offered food and water and bathroom, and later started to give an interview, and it is my understanding that you have found that it was not voluntary. Assuming those facts to be true that [253] I've told you, and subsequent facts that the law enforcement officers are telling him, you know, get it off your chest, this will help you, this is the right thing to do, would that cause Victor Brancaccio to involuntarily give a statement to law enforcement officers, knowing his state of mind on June 14th, 1993?

A It would have little to no effect in that he was already involuntary relative to having control over his thinking machinery when he walked in the door, and the preceding week and two or three weeks before that.

Q So what –

A I mean, you could have strung him up from his toe nails, probably, so to speak and – I'm exaggerating here with hyperbole, but it would have, in my opinion, had little to do, or affect what was the problem with his thinking machinery in the first place, any of these things that you're sort of dwelling on here.

Q So whether or not they beat him or promised him, that would not have made a difference in this situation, or not do anything?

A In my opinion what was wrong there is, basically, these sort of minute to minute scenario [254] situations are generally irrelevant. His problem is a lot bigger than whether someone offered him a donut.

Q Or offered him that everything would be okay and fine, nothing would happen to him, that wouldn't matter in this situation?

A In my opinion it wouldn't matter. The whole thing was nonsense, so to speak.

MR. TORRES: No further questions at this time, Judge.

THE COURT: You may Cross Examine, sir.

CROSS EXAMINATION

BY MR. MORGAN:

Q Dr. Uttley, how are you?

A Good.

Q Dr. Uttley, my name's David Morgan, I'm the prosecutor and I just want to ask you a few questions based on the questions the Defense lawyer asked, okay.

I think what you, and you correct me if I'm wrong, but in response to your last series of questions that Defense lawyer asked you, that nothing the police did made a difference, the problem was, first of all, organic, and second of all, emotional and psychological?

[255] A No, no.

Q Okay.

A No, that's not right, you've got it wrong. The problem –

Q All right, then let me ask it this way.

MR. TORRES: Objection, let him answer it.

MR. MORGAN: He did answer it.

THE COURT: You'll have a chance on your redirect. Proceed sir.

BY MR. MORGAN:

Q Let me ask it to you this way, then. Is it true the Defendant was the one having the problem, and nothing the police did, as evidenced by your answers to the hypotheticals, affected the Defendant vis-a-vis the giving of that statement, in your opinion?

A Correct.

Q Okay. Now, going to exactly, quote, what was wrong with the Defendant – what was wrong with his brain, let's start with that. Now, I think you stated that

you were relying in part, and you qualified that to some extent, but you were relying upon examinations and diagnoses that were done by other professionals, some of whom you know, I think you mentioned?

[256] A Correct.

Q Is that correct?

A Correct.

Q Now, did you yourself administer any tests, psychological tests or a battery of tests upon the Defendant?

A Myself, I did not. A psychiatrist would not administer a battery of psychological tests. We need to tighten up on the terminology. A psychologist is a Ph.D. level doctor, whereas a psychiatrist –

Q I didn't accuse you of being a psychologist.

A No, I understand that, but just so the Court is clear because your statement seemed to confuse –

THE COURT: I'm familiar with psychiatrists and psychologists, as well.

THE WITNESS: Okay, right, but psychiatrists don't do psychological testing, so to ask them did if I did them, of course –

BY MR. MORGAN:

Q I understand.

A I did not do that, a psychologist does that. I did what a psychiatrist does, and that is [257] do a psychiatric history and mental status evaluation.

Q Well, would not one of the things that a psychiatrist does is to administer certain tests to a person? If somebody came into your office, forget this Defendant, but if somebody came into your office for treatment, would that not assist you to determine or make a diagnosis as to whether they had some sort of mental defect or psychological disorder?

A That information very well would assist me. I would not – ninety-nine out of a hundred psychiatrists do not administer those examinations.

Q Well, do you refer it over to a psychologist to do and then review the tests?

A That's correct. I would refer that to a psychologist and then review the existing reports from other professionals.

Q You have to help me.

A We're doing good.

Q I understand. I think you mentioned in your analogy if the plane crashes, if you're looking to determine the cause of the crash we're going to look at pilot error, number one, and mechanical error as number two; is that correct?

[258] A Correct.

Q Taking that analogy, would it not be helpful for you to talk to those individuals who are eyewitnesses to that crash?

A If they're qualified to determine the difference between mechanical and pilot error –

Q Well –

A – externally. Sure, I would definitely love to talk to anybody that was qualified to make that distinction.

Q Even if they weren't – Let me ask you it to you this way. Would you agree with me that somebody could be standing right behind that pilot and not be able to describe to you mechanically what the pilot did to you, but be able to describe the hand motions of the pilot as he touched a certain button without knowing what that button was, thereby giving you the ability to determine why that plane crashed? Do you understand what I'm saying? Wouldn't it be helpful to talk to that person?

A See, that's where the analogy breaks down. You can't go quite that far with it because unless it was a person who knew the entire scenario of the airplane that I talked to, my sense is that a misleading conclusion could so easily be drawn from [259] a casual observer, even no matter how detailed his description of the action was without having it put in the appropriate context.

Q Would you agree with me that we can have perhaps another psychiatrist, or psychologist for that matter, come in that may render a different opinion than you on the very same facts that you've been given here by Defense lawyer and the facts that you know from your background investigation –

A Certainly.

Q – and it may be a directly contrary result?

A It wouldn't surprise me.

Q Then why would a lay person who was there during the situation, why would not they be equally able to at least give some sort of statement or testimony regarding the mental capacity of the Defendant at the time that he were to do an act like waive his Miranda Rights? I mean, why wouldn't that be important to you?

A You're asking – I need to deal with somebody that I feel is competent, knows what's going on. Just because somebody comes in and says they come to a particular conclusion, I might think they're not competent if they don't consider the [260] facts that I do. The value of what I have to say rests on what the Court determines to be the quality of my expertise.

Obviously, I would have great concern if a report didn't match mine, and basically I'd say, well, they did not do what I did; if they did they would come to the same conclusion, okay.

As far as whether I, you know, deal with a lay person off the street to arrive at the conclusions I need to know, I don't do that in general.

Q Okay.

A I doesn't – it doesn't help do the work I need to do.

Q Well, it may not help your client either if you talked to the police officer who was actually there and talked to him, would it? By definition it would almost never help your client.

A For the purposes of asking his psychiatric opinion about the client, absolutely not. I wouldn't bother asking a police officer unless I particularly knew he, you

know, had some extra skills in psychological matters. I mean, police officers could have skills in psychological matters if they took special training in that or were [261] qualified for it.

Q But, again, those that have special training among themselves may disagree?

A Not the ones who have standardized training.

Q Is it your opinion that the Defendant suffered at the time of the waiver of Miranda – and there were, I'm sure you're aware of this, at least two separate waiver instances during this statement. Is it your opinion that the Defendant was suffering at that time from a dissociative order?

A Correct.

Q Now, you described that as kind of sleepwalking, is that what you said, or one example of dissociative order?

A Right. Basically it's the –

Q Just yes or no. I don't mind if you explain it, but give yes or no.

A I described that as a similar situation.

Q Okay, did you want to describe further?

A Basically, it's the loss of touch with reality.

Q You also described that as like drunk talking?

[262] A Like, not identical to, correct.

Q Well, wouldn't it be fair to say that somebody who was in a dissociative state, even somebody who was

not specially trained like you would pick up on the fact that this person had snapped out, was out of it?

A Not necessarily.

Q Okay. Is it not –

Q It's hard for a professional, it's hard for the psychiatrist to come to that conclusion. It's a very, very subtle thing to do.

Q So, in other words, you could be walking around – I could walk around this courtroom right now and talk to people in a dissociative state and not even know it?

A That is very true, correct.

Q And they could act totally rational with me and me with them?

A That's correct. The psychiatric literature is replete with umpteen dozen of these situations where a guy moves to the next town and lives the next ten years there, and then snaps out of it and then returns home.

Q Okay.

A So he would have completely been normal to [263] those people he was living with through those ten years, and this is part of what a psychiatrist believes to be true and our conclusions.

Q What about this fact he was in a dissociative state would cause this particular person to not make a voluntary waiver, what about it would cause you to give that conclusion? What specifically?

A Under those circumstances it doesn't matter whether it's voluntary or involuntary. There's no capacity

to give it whether it was – whether it – it's independent of how it was initiated.

Q Let me ask you this; are you making a comment as to the accuracy of the Defendant's statements in that transcript?

A No. The validity of them, is what I'm saying. The validity of what he said is generally of no value.

Q Just help me here, now. If somebody's in a dissociative state, okay, I just automatically assume that a statement one would receive from that person may not be accurate because they lack the capacity, you know, as you pointed out because of the various other problems, they are lacking the [264] capacity to tell you things from a volitional point of view?

A No. That's – it's not voluntary based. It's from a reality based point of view.

Q So all of this could have been entirely true, what he was saying?

A It's conceivable it could have been true.

Q Well, you know yourself because you've done extensive background checking that many of those statements in there were corroborated with other evidence, do you not? Many of those statements in that transcript were corroborated with other evidence?

A I don't know. I'm not familiar with putting the two together.

Q Well, for example, I'm sure you're aware – and if you're not, let me ask you this way. Are you aware that

after the statement was given, immediately afterward, Mr. Brancaccio volunteered to take them and show them where the woman lived, and it turned out he was right, that is where the woman lived as verified by a driver's license; aren't you aware of that fact?

A Not particularly.

Q Well, doesn't that seem to indicate a [265] volitional act on the part of a person, a thinking one and one make two, two and two make four kind of action on the person's part?

A Not particularly.

Q What is it then?

A It's just coincidence. I don't know what to say.

Q Coincidence? What about if –

A If you're sleepwalking, you find your way back home, it's the equivalent of that.

Q That's not what I'm talking about.

A Were you aware of what you did and said when you left your house and walked down the street and then found your way back home; there's certain aspects of that functioning that you're going to be able to do competently, that's correct.

Q We're not talking about back home. We're talking about all the houses that are around here. He goes to a different house, the victim's house. That's not where they started from. They started from the police station which is way on the other side of Port St. Lucie here and goes to her house, takes them there. Now, is that a sleepwalker?

A I don't understand your point.

Q My point is, you're saying he's in a [266] dissociative state, therefore, all this basically didn't happen in his mind, as I understand what you're saying. It's not whether it's voluntary or not voluntary, it's not reality to him. But, yet, he takes them to the victim's house which, it appears to me, and you correct me if I'm wrong, is indeed a piece of reality.

A That could be.

Q That doesn't cut against your finding of a dissociative state?

A No.

Q Let me ask you –

A No. One could expect that you could say "hi, mom" and recognize mom or sis or whoever in your dissociative state. You wouldn't have any recollection of doing that. You would – it would be typical to identify the person while it's happening, it would be typical to do some of the correct things, but the person would be uncoupled from any true knowledge, any reality based knowledge.

Q Okay, it seems to me –

A That's what I'm saying.

Q Sometimes in the law we use this terminology when talk to juries – as you know, [267] many crimes we have require intent as an operation of the mind. And many times we tell jurors it's impossible to rip open someone's head and look inside, but isn't that what

you're saying you're able to do prospectively? I mean, not prospectively, but I mean as a matter of reconstructing what happened. You look inside his mind to see how his mind was functioning at the time, isn't that what you're purporting to do with your testimony?

A I need to have some sense of, in my opinion, based on the information that was the foundation for his mental functioning up until the time of the event. I reasonably draw the conclusion. I wasn't there, the prosecutor's expert wasn't there, nobody's expert was there. So anybody that's going to make a statement about that is going to have to make a conclusion. I'm concluding that. I'm not prying open somebody's mind. I couldn't pry it open if I was there with him.

Q You're forming an opinion as to the state of his mind, are you not?

A Correct.

Q Now, in response to this specific question, and I may have written this down wrong, [268] but in response to the specific question by Defense lawyer I think he asked, and forgive me if I have it wrong slightly, he said did Victor voluntarily waive his rights, do you have an opinion within a reasonable degree of psychiatric or scientific certainty; and your response was, the mental functioning at the time was of insufficient capacity for testimony. That's what I wrote down.

A Correct.

Q Let me ask you that same question and just give me a yes or no. Is it you opinion that Victor Brancaccio

did not voluntarily waive his rights back on June 14th, 1993, when being questioned by the police officers?

A He wasn't in the frame of mind, in my opinion, to understand what a right was. So, therefore, it's my opinion that you can't waive voluntarily or involuntarily something you don't have an adequate reality based grasp upon.

Q Even though at the time the officers have testified that he appeared to understand everything he was saying and answered questions appropriately?

A That's what we've been developing here. A person who is dissociative, will walk and talk and live a live in a town as a responsible citizen, [269] vote, have children, get married and do everything and appear perfectly normal for ten years. So, I would not be surprised if he walked and talked and said or did whatever.

Q But he's not taking voluntary actions when he goes out and does things? I mean, I'm just trying to understand. During this whole ten years this person's living and voting and doing everything else, stopping at red lights, doing all kinds of things, he's not doing it voluntarily?

A The point is to do something voluntarily or not voluntarily you have to know and grasp what it is. You're going to do one or the other outcome. The point is – that's not the point. You're going to either do something or you're not going to do it. The action is going to occur one way or the other.

Q Right.

A That has nothing to do with the concept, your dissociation. The dissociation is when you don't understand within yourself in a reality based way what it is that's the intention of the action one way or the other.

So it – so the point is then, why does it matter whether its voluntary or not.

[270] Q Well, it matters because that's the whole issue before the Circuit Court Judge here, whether it's voluntary, and that's the whole opinion you're giving?

A I understand, but that's for the Court to decide. I'm commenting on what's the capacity in this person's brain.

Q I'm not accusing you of playing games with me, Doctor, but I really don't understand what you're saying, obviously, and if you'll bear with me for a few minutes.

A Okay.

Q I know you're saying and I hear you saying that the Defendant makes decisions as a defendant who would who was in one of these states would make for ten years, they make decisions. It may be the right decision, it may be a wrong decision, but they make decisions. But in a reality based way of looking at it, they're not making decisions based upon true concepts or reality, is that what you're saying?

A That's what I'm saying. Either way they make them it's just not reality based. Whether they make them one way or the other, what's the difference from the reality point of view? They're [271] not capable of understanding. Whether they get it right by happenstance or

whether they get it wrong, they don't realize. There's no realization one way or the other –

Q Okay.

A – from the ultimate perspective of reality.

Q Okay, let me see if we can agree on at least something. Would it fair to say that all this that you spoke of is not because of anything the police officers did, this is something that's either genetically coded, brain damaged resulted, or something of that nature, but it's not in any event something as a result of anything the police officers did?

MR. TORRES: Objection. I don't think he has the foundation to know what the police did or did not do unless he gives him a hypothetical.

THE COURT: Your objection's in the record. I'm going to overrule it. He can answer the question first whether or not he's able to answer it. Do you understand his question?

THE WITNESS: I think – Well, could you [272] repeat the question?

THE COURT: Repeat it.

MR. MORGAN: Well, actually, with the Court's indulgence, I'll ask one or two and then ask him question.

BY MR. MORGAN:

Q Have you read the transcript of the proported statement given by the Defendant on June 14, 1993?

A Yes.

Q And have you read police reports from the police department regarding the circumstances of the crime itself and the giving of that statement?

A Yes.

Q Do you consider yourself to be somewhat familiar with, or have you made it your business to be familiar with the circumstances of that statement?

A The general gist of it, yes.

Q And you are forming an opinion here today about part of that statement, are you not?

A I don't understand that question.

Q I'll withdraw it then and we'll go on to some easier ones. I may have stated it but you couldn't understand.

[273] The bottom line is this, based on everything you read and everything that's before you which includes the transcript and the police reports and a general understanding of that statement, would it be fair to say that that waiver given by the Defendant is not as a result of any police action? Is that – stated that way is it clear?

MR. TORRES: Just for the record I'm going to object to the question in its form. It assumes he knows what the police did, and he does not know.

MR. MORGAN: Your Honor, he –

THE COURT: Excuse me, I don't need to. Overruled.

MR. MORGAN: Thank you.

BY MR. MORGAN:

Q Let me add one word to that. As you say, involuntary waiver, can we agree that it was not the result of police action but the result of various brain problems, psychological problems that you have in great detail enunciated today?

A As I – I guess I'm grasping what you're saying, and as I said before, what his mouth said at that time was not under any influence of anybody, including the person of Victor Brancaccio. It was [274] under, and only under the influence of the defective machinery that happened to be operating his mouth.

Q Okay.

A That's what I'm saying.

Q Which excludes the police officers?

A Okay, in that case we're on the same wavelength, it excludes the police officers. I thought we went over that before.

MR. MORGAN: I think I'm finished, Judge, if you'll give me one moment.

THE COURT: Sure.

MR. MORGAN: Thank you, Doctor, nothing further.

THE COURT: Do you have any Redirect, sir.

MR. TORRES: Just a couple of questions, Your Honor.

THE COURT: Sure, go right ahead.

REDIRECT EXAMINATION

BY MR. TORRES:

Q Doctor, it doesn't matter in the dissociative state what anyone else did, law enforcement, a nurse, a doctor, it doesn't matter, what came out of his mouth came out of his mouth. My question to you is this; if a person suffering from a dissociative state or any organic personality [275] disorder, is that person more susceptible to psychological type of coercion, to subtle coercion, than a normal person would be?

A I don't know that I could answer that. I don't know. What comes to my mind is that one of the hallmarks of a person who's sort of out of touch with reality, the lights are on and nobody's home is, as I've mentioned, the distinct quality of disinhibition. It would be like – the closest and it's not identical, but the closest thing we can sort of think of is in a dream. Everything in a dream is basically – it's very clear that the action is clear and crisp and there's words and vocabulary and a lot of things are said and done and what not, but it tends to be bizarre and disjointed and things are sort of out of balance, because there's the wakeful reality, necessary inhibitions that stop us from engaging in these things that run amuck in our dreams is absent in this type of condition. So, what would the effect of a particularly strong stimulus be on a person whose guard is completely disinhibited? I don't know. It would be speculation. I don't know what I can say but that would be the closest thing I could get to a scenario, it would be a person vulnerable with their [276] guards down. I don't know.

Q So is it fair to say that because of this – this disinhibition, this person would be more susceptible to stimuli surrounding him.

A Well, I could only answer that by saying that our wakeful hibitions are to control the stimulus around us and choose and sort through it so that we're not constantly spinning in circles responding to everything. And if those guards are down, I suppose you would be sort of at the mercy of whatever stimulus there is.

IN THE CIRCUIT COURT OF THE
19TH JUDICIAL CIRCUIT, IN AND
FOR ST. LUCIE COUNTY, FLORIDA

CASE NO.: 98-1592-CF-A

STATE OF FLORIDA,

PLAINTIFF(S),

-VS-

VOLUME XVI

VICTOR BRANCACCIO,

DEFENDANT(S).

_____/

TRANSCRIPT OF PROCEEDINGS

This cause came on for trial before the Honorable C. Pfeifer Trowbridge, Circuit Judge, on the 14th day of January, 1999, beginning at the hour of 9:30 o'clock a.m., at the Indian River County Courthouse, Florida.

The appearances at said time and place were as follows:

APPEARANCES:

FOR THE STATE:

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* * *

[1896] [MR. BLACK] Q What did you find, what kind of performance, approximately when did he take the test and what were the findings regarding that?

[DR. ANTOINETTE APPELL] A On November 10th, 1983 he had a verbal IQ of seventy-five a performance IQ of eighty-four and a full-scale IQ of seventy-eight the lower limit of average is eighty-five the mean of average, what we consider average, is a hundred. In 1989, using the same test so we had familiarity with it, his full-scale IQ was eighty-three. In November of 1991 his full-scale IQ was seventy-eight. And on April 28th, 1993, which is about six weeks before the events – seven weeks before the events that bring us here, his full-scale IQ was seventy-two.

Q Now, that testing was done at Savannah's Hospital, was it not?

A That is correct.

Q What significance would a – would you give to an IQ of seventy-two, what does that mean in terms of where he would rank in intelligence?

A It is just barely above the formal cut point for what is called mental retardation and, in fact, his verbal IQ is in the mentally retarded range.

* * *

[1899] The KBIT and – in fact, all of the Kalfman tests stress concept formation, thinking, the things that you and I tend to think of as the functions of the brain. That is different from the Wexler approach which tears the brain apart into different areas and tries to test those areas. Kalfman is more directed to how well can you integrate information, how well can you think.

Q And how did – first of all, when was that test administered?

A The KBIT was administered in November 1993.

Q All right. So approximately four or five months after the events that bring us here?

A That is correct.

Q After the death of Mollie Frazier?

A That is correct.

Q What kind of a score did he have on the KBIT?

A Sixty-three.

Q What does that signify to you?

A That signifies that his ability to conceptualize, to think, to reason things through is markedly in the

retarded range. It is the same scale, one hundred is average, eighty-five is the lower range of average, seventy is – sixty-nine and below are in the retarded range.

Q So in his ability to think as we think about thinking is in the retarded range?

A That is correct. We all think of the brain as the big mushroom, the mushroom room isn't working.

* * *

IN THE CIRCUIT COURT OF THE
19TH JUDICIAL CIRCUIT, IN AND
FOR ST. LUCIE COUNTY, FLORIDA

CASE NO.: 98-1592-CF-A

STATE OF FLORIDA,

PLAINTIFF(S),

-VS- VOLUME XVII

VICTOR BRANCACCIO,

DEFENDANT(S).

_____/

TRANSCRIPT OF PROCEEDINGS

This cause came on for trial before the Honorable C. Pfeifer Trowbridge, Circuit Judge, on the 14th day of January, 1999, beginning at the hour of 1:30 o'clock p.m., at the Indian River County Courthouse, Florida.

The appearances at said time and place were as follows:

APPEARANCES:

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* * *

[1931] [MR. BLACK] Q How suggestible is someone like Victor?

[DR. ANTOINETTE APPELL] A Very suggestible.

Q What do you mean by that?

A People who have the degree of intellectual and school performance impairment that Victor does learn early to agree with authority figures, to parrot back to them what they are told, it keeps them out of trouble and so they learn that. They will take your lead. We see that throughout the educational system, throughout the kinds of patients that I treat. That is why these kids can be described as compliant and cooperative. They tell us what we want to hear.

* * *

[1952] [PROSECUTOR] Q Now, you say he is, despite the IQ test, despite performance on some of these school records, that he is mentally retarded and that he cannot cope in school; isn't that what you said?

[DR. ANTOINETTE APPELL] A I think that from a functional point of view he is mentally retarded.

Q Dr. Appel, answer yes or no first and then if you need to explain your answer?

A The question as you phrased it is not what I said, I don't think. I think what I said is from a functional point of view he behaves as if he is mentally retarded. His IQ test scores with the exception of the verbal IQ in April and the KBIT don't indicate that he is mentally retarded but he certainly is outside the normal range, but functionally he behaves as if he is mentally retarded.

* * *